CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 31

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, PETITIONER,

vs.

CITY OF AVON PARK, FLORIDA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 15, 1940.

CERTIORARI GRANTED APRIL 22, 1940.

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ON AUGUST 15, 1938, the City of Avon Park filed its original Petition for the composition of its debts. Additional exhibits in the same form as Exhibit D 1 were filed by other consenting creditors and all such exhibits are omitted herefrom as they are similar to D 1. Said Petition and exhibit were in the following form, to-wit:

PETITION FOR COMPOSITION OF DEBTS UNDER SECTIONS 81, 82, 83 AND 84, OF CHAPTER IX, OF THE ACTS OF CONGRESS RELATING TO BANKRUPTCY OF AVON PARK, FLORIDA, A MUNICIPAL CORPORATION.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF FLORIDA. TAMPA DIVISION.

Copy.

IN THE MATTER OF:

CITY OF AVON PARK, FLORIDA, DEBTOR.

No. 3088-T-BANKRUPTCY.

In proceedings for Composition of Debts under Sections 81, 82, 83 and 84, of Chapter IX, of the Acts of Congress relating to Bankruptcy.

Comes now the City of Avon Park, a municipal corporation, and respectfully represents as follows:

(1) That petitioner is a municipality created and now existing under and by virtue of Chapter 12,514, Laws of Florida, Special Acts of 1927, and acts amendatory there-

of and supplemental thereto, and is a municipality within the meaning of Section 81, of Chapter IX, of the Acts of Congress relating to bankruptcy, and is entitled to file a petition thereunder in order to effect a plan of composition of its debts.

(2) That petitioner is located within the territory and jurisdiction of the United States District Court for he Southern District of Florida, Tampa Division.

(3) That petitioner is indebted on account of the unpaid principal and interest evidenced by its outstanding bonds and interest coupons and interest on bonds not represented by coupons or judgments on bonds and coupons and interest thereon, as in this paragraph set out. That prior to the creation of petitioner, City of Avon Park, under and by virtue of Chapter 10,320, Acts of 1925, and Chapter 12,514, Acts of 1927, a municipality known as "Town of Avon Park" existed and exercised jurisdiction over a portion of the territory now included within the City of Avon Park, petitioner herein,
2 the said Town of Avon Park having been created by and having existed under and by virtue of Chapter 6662 of the Laws of Florida; that the portion of the territory of petitioner, City of Avon Park, included within the Town of Avon Park consisted of about three (3) square miles; that during the existence of said municipality, Town of Avon Park, bonds of said town were issued, the outstanding portions of said bonds being described as follows, including the name of the issue, the date thereof, the principal amount outstanding, both matured and unmatured, and the interest on the said bonds, whether represented by coupons or not, up to and inclusive of July 1, 1937, to-wit:

Name of Issue	Date of Issue	Principal Amount Outstanding Matured	Unmatured	Interest Accrued to 7-1-1937, whether represented by coupons or not
Street Bonds	6/1/16	None	$30,000	$10,150.00
Street Bonds	11/1/20	None	16,500	6,645.00
Street Bonds	5/1/22	None	47,000	18,560.00
Refunding Bonds..	5/1/22	None	10,000	4,300.00
Park Improvement Bonds	5/1/22	None	5,000	2,300.00
Street Improvement Bonds	1/1/24	$22,000	None	9,330.00
Street Improvement Bonds	1/1/25	6,000	None	2,760.00
Improvement Bonds, Issue of 1925....	5/1/25	30,000	158,000	61,760.00
Refunding Bonds, Issue of 1925....	5/1/25	11,000	27,000	29,360.00
Totals		$69,000	$293,500	$145,165.00

That by virtue of the issuance of the said bonds pledging the full faith and credit of the then Town of Avon Park, the territory included in the said town as it then existed became subject to taxation to pay the principal and interest of said bonds; that for purposes of convenience the bonds above described, the principal and interest of which are payable from taxation upon territory included within the original Town of Avon Park, will be classified and in these proceedings hereafter referred to as "Class A Bonds," and the territory originally included within said Town of Avon Park will be referred to as "Zone A."

That the Legislature of the State of Florida, Session of 1925, by Chapter 10,320, Special Laws, abolished the Town of Avon Park and created in its stead a new munici-

pality known as "City of Avon Park," which included all of the territory of the Town of Avon Park, and in addition thereto, territory to the extent of approximately thirty-three (33) square miles. That during the time said Chapter 10,320 was in force and effect, the City of Avon Park issued other bonds, the name, date of issue, principal amount outstanding (both matured and unmatured), and the interest accrued to July 1, 1937 (whether represented by coupons or not), of the said issues being, respectively, as follows:

Name of Issue	Date of Issue	Principal Amount Outstanding Matured	Unmatured	Interest Accrued to 7-1-1937, whether represented by coupons or not
Street Improvement Bonds	12/1/25	$58,000	None	$24,560.00
General Improvement Bonds	10/1/26	None	$323,000	137,205.00
Street Improvement Bonds	5/1/27	36,000	None	15,230.00
Refunding Bonds	1/1/29	20,000	68,000	38,430.00
Totals		$114,000	$391,000	$215,425.00

For purposes of convenience, the territory annexed by said Chapter 10,320 will be hereinafter in all proceedings in this cause referred to as "Zone B," and the bonds of the City of Avon Park issued after the acquisition of said territory in "Zone B" will be hereafter in all
4 proceedings referred to as "Class B Bonds."

Thereafter, and during the session of the Legislature of the State of Florida of 1927, Chapter 12,514, Special Acts, was passed abolishing the old City of Avon Park created by Chapter 10,320, and creating a new municipality to be known as "City of Avon Park," with the same

described territory as that set out in Chapter 10,320, Acts of 1925, and in said Chapter 12,514 it was provided in Section 3 thereof that the payment of all bonds issued by the municipality of the Town of Avon Park prior to January 1, A. D. 1926, "shall be restricted to the property lying within the original limits of said municipality, and the property lying beyond said limits and now included within the limits of the municipality hereby created shall not be taxed for or required to pay any portion of said bonds issued by the municipality of the Town of Avon Park prior to the first day of January, A. D. 1926."

That all of the said indebtedness evidenced by the said issues of bonds constitutes general obligations of the petitioner payable by the levy of ad valorem taxes to be levied on all taxable property within the corporate limits of petitioner, limited only as to the liability of certain of the territory hereinbefore described for the respective issues of bonds hereinbefore set forth, in accordance with the present Charter of the City of Avon Park, although certain of said bonds are, in addition, payable from certain special assessments. Then an amount in excess of $185,000.00 principal of said bond issues above mentioned has matured and become payable previous to the date of the filing of this petition, and petitioner is in default in the payment of the same, said default having continued for more than seven years last past; that in addition thereto petitioner is in default in the payment of interest on its said bonded indebtedness in an amount exceeding $375,000.00 as of the date of the filing of this petition; that petitioner is therefore in default at the time of the filing of this petition in a total amount in excess of $550,000.00 representing matured principal of said bonds and interest represented by interest coupons and interest not represented by interest coupons, all of which amounts are immediately due and payable.

(4) That during the years 1926 to 1937, inclusive, the amounts collected by your petitioner from taxes levied for the purpose of paying principal and interest on said outstanding obligations, including the amounts collected on special assessments levied to pay some of said bond issues, have been insufficient to provide for the payment of the principal and interest of all of said obligations as the same matured. That the following is a statement of the amount of taxes levied and collected by petitioner in each of the several years, 1926 to 1937 both inclusive, for the payment of such principal and interest and for the operating costs of said city, together with the amount of taxes still delinquent:

Tax Year	Total Levy	Amount Collected	Amount Delinquent
1926	$111,116.35	$102,994.95	$ 8,121.40
1927	99,910.22	90,465.60	9,444.62
1928	98,722.16	80,784.06	17,938.08
1929	67,756.06	57,143.37	10,612.69
1930	56,979.33	45,737.18	11,242.15
1931	54,992.77	45,273.91	9,719.06
1932	60,948.36	46,379.59	14,568.77
1933	87,820.89	64,394.06	23,426.82
1934	73,679.44	64,838.72	8,840.72
1935	57,238.83	42,787.61	14,451.22
1936	104,999.52	36,004.55	68,994.97
1937	70,464.50	26,879.30	43,583.20

That petitioner has foreclosed real estate for taxes during said period amounting to $206,696.79, and in showing the amounts of taxes collected the said sum of $206,696.79, although represented by real estate, is shown as
6 taxes collected in the above table.

That the assessed valuation of all of the taxable property located within the city limits of your petitioner and sub-

ject to taxation for the payment of principal and interest of said bonded debt has steadily decreased for the last several years. That the following table shows the tax valuation for the years 1926 to 1937, both inclusive, indicating said decrease:

Year.	Assessment Roll.
1926	$6,536,256
1927	9,814,220
1928	7,541,040
1929	5,942,633
1930	6,128,900
1931	3,981,269
1932	3,869,107
1933	3,219,638
1934	1,998,456
1935	2,841,451
1936	2,748,953
1937	2,504,087

That since your petitioner became in default in the payment of its bonded debt its governing authority has made due and diligent efforts to collect the taxes levied for the purpose of paying such principal and interest on said outstanding bonded indebtedness, but has been unable to do so, except as hereinbefore shown, because of the said decrease in said property values and in the income of the taxpayers of the city which has been occasioned in part by the national financial depression and in part by the peculiar conditions obtaining in the City of Avon Park. That it is impracticable to attempt to levy sufficient taxes to meet said delinquencies in principal and interest of the outstanding indebtedness of your petitioner and to meet the accruing maturities of principal and interest in the next several years, and that it would be impossible to collect the same if taxes were levied in such amounts.

7

(5) That your petitioner desires, therefore, to effect a plan of composition involving all of its bonded indebtedness aggregating $867,500.00 in principal amount as described in Paragraph (3) hereof outstanding as of July 1, 1937, and all interest coupons appertaining thereto, together with all accrued interest on said bonds not represented by coupons and all judgments rendered on any of the said bonds or coupons or interest not represented by coupons; that your petitioner has therefore adopted and now files and submits herewith a plan of composition hereinafter mentioned affecting all of the aforesaid indebtedness, a copy of which plan of composition is hereto attached, marked "Exhibit A," and incorporated herein by reference as fully as though set out at length.

(6) That the said plan of composition is embodied in that certain agreement made and executed July 17, 1937, by and between R. E. Crummer & Company, a Delaware corporation with its principal office at Orlando, Florida, as party of the first part, and your petitioner, City of Avon Park, as party of the second part; that said agreement constitutes all of the understandings, agreements and plan of settlement of the bonded debt of your petitioner subsisting between your petitioner and the said R. E. Crummer & Company, and that there are no undisclosed understandings or agreements between your petitioner and the said R. E. Crummer & Company, and that the said agreement constitutes the sole and exclusive plan of settlement of your petitioner's outstanding bonded indebtedness included and referred to therein. That there is attached hereto, marked "Exhibit B" and made a part hereof, a true copy of the said agreement, together with a copy of an excerpt from the minutes of the meeting of the City Council of the City of Avon Park adopting and approving the said contract.

8

(7) That at a meeting of the City Council of the City of Avon Park held on August 12th, A. D. 1938, said City Council adopted a resolution authorizing the filing of this petition, pursuant to the aforesaid sections of the National Bankruptcy Act, and pursuant to Chapter 15,878, Laws of Florida, Acts of 1933, a true copy of said resolution being attached hereto and marked "Exhibit C," and made a part hereof.

(8) That the governing authority of your petitioner has heretofore outlined and legally adopted a plan for the composition of its debts hereinbefore referred to, a copy of which is attached to this petition and made a part hereof as "Exhibit A," and has submitted the same to its creditors; that the creditors referred to in this petition are the creditors of your petitioner owning the bonds of said city and interest coupons thereof, and do not include the holders and owners of any other indebtedness of said city; that under said plan of composition said city's adjustment of its indebtedness is to be based upon the principal amount of its bonds and principal amount of its said interest coupons and past due interest not represented by coupons due and unpaid to and including July 1, 1937, including said bonds and interest coupons that have been reduced to judgments; that all interest coupons are to be surrendered under said plan, whether due on or before or after said July 1, 1937, and that the bonded indebtedness of your petitioner referred to in this petition includes the said two sums hereinbefore set forth, viz., $867,500.00 principal and $350,590.00 interest.

(9) That creditors of your petitioner holding securities to the amount of $546,500.00 of the principal or face amount of said bonds, and holding and owning
9 coupons thereof, or interest not represented by coupons due up to and including July 1, 1937, in the amount of $176,986.66, face amount of said coupons

or interest, have accepted in writing said plan of composition of your petitioner's debts, and their written acceptances are hereto attached as "Exhibit D-1," to "Exhibit D-43," both inclusive, for identification, and the same are made a part hereof the same as though set forth in full herein; and that the said written acceptances constitute and are acceptances by creditors of your petitioner owning and holding more than 51 per centum in amount of the securities affected by the plan of composition, exclusive of any such securities owned, held or controlled by your petitioner, and that your petitioner does not own, hold or control any of the said securities.

(10) That a list of all known creditors of your petitioner, together with their addresses, so far as are known to your petitioner, and description of their respective securities, is hereto attached and made a part hereof, the same as if set forth in full herein, and marked "Exhibit E" for identification, said list showing separately those creditors who have accepted the said plan of composition on the first 9 pages thereof, and said list showing separately each of the respective bond issues of your petitioner, or securities of your petitioner, affected by said plan of composition, the last 13 pages of said "Exhibit E" containing separately a list of all known bondholders or security holders of your petitioner affected by said plan of composition who have not accepted said plan, showing their names, together with their separate addresses and a description of the respective securities held by them so far as your said petitioner is able to describe said securities. That none of the bond issues of your petitioner are registered, and for that reason petitioner cannot describe the securities held by said bondholders who have not accepted said plan other than as holding said bonds of your petitioner in certain principal amounts, together with said coupons thereon, your petitioner being unable to state specifically which

particular issues of bonds the respective bonds and coupons are parts of. That on account of said bonds not being registered, your petitioner does not have and cannot obtain full, accurate and complete information as to the owners of all of its said bonds; that included in said list of bondholders who have not accepted said plan are some persons and parties owning bonds or securities the amounts of which are unknown to your petitioner.

(11) That prior to the filing of this petition judgments, writs or decrees as hereinafter fully described have been awarded against your petitioner in the District Court of the United States, for the Southern District of Florida, and in the Circuit Court of the Tenth Judicial Circuit in and for Highlands County, Florida, within which your petitioner is located, said judgments, writs or decrees and the Courts in which the same were awarded being as follows, to-wit:

In the District Court of the United States, for the Southern District of Florida, Tampa Division, as follows:

Lawrence W. Rittenoure vs. City of Avon Park, No. 3371-T-Civil, Final Judgment for $63,352 and Costs of $12.22, awarded ....., 1936, and alternative writ of mandamus issued thereon June 19, 1936;

Security Benefit Association vs. City of Avon Park, No. 3350, Final Judgment for $13,294.40 awarded October 11, 1935, and peremptory writ of mandamus issued January 22, 1937. No return to said writ;

United Mutual Life Insurance Company vs. City of Avon Park, No. 3349-T-Civil, Final Judgment for $13,942.50 awarded October 1, 1935, and peremptory writ of mandamus issued January 22, 1937, for millage sufficient to pay said judgment;

William E. Sweet vs. City of Avon Park, No. 5387 Final Judgment for $9,952.80 awarded December
11 16, 1935, and peremptory writ of mandamus issued January 22, 1937;

Roger W. Babson vs. City of Avon Park, No. 3137-T-Civil, Final Judgment for $6,114.82, plus $17.62 costs, awarded May 30, 1933, and peremptory writ of mandamus issued March 15, 1937;

Vermont Investment Company vs. City of Avon Park, No. 3451-T-Civil, Final Judgment for $34,606.40, plus costs of $17.58, awarded June 4, 1936, and writ of mandamus issued September 10, 1936;

Women's Benefit Association vs. City of Avon Park, No. 3351-T-Civil, Final Judgment for $29,090.00, plus $12.18 costs, awarded August 2, 1935, and writ of mandamus issued for the levy of 3½ mills on the 1935-1936 tax roll.

And in the Circuit Court of the Tenth Judicial Circuit of Highlands County, Florida, as follows:

Gulf Life Insurance Company vs. City of Avon Park, No. ....., Final Judgment for $2,847.67, plus $10.50 costs, awarded April 12, 1934;

Charles B. Prettyman, et al., as Trustees, vs. City of Avon Park, No. ....., Final Judgment for $9,778.66, plus costs of $10.75, awarded October 20, 1933, and writ of mandamus issued November 6, 1933, requiring a tax levy to pay said judgment;

First National Bank of Gainesville vs. City of Avon Park, No. ....., Final Judgment for $6,610.53, plus $12.25 costs, awarded November 10, 1932;

First National Bank of Gainesville vs. City of Avon Park, No. ....., Final Judgment for $5,421.24, plus $11.60 costs, awarded April 18, 1933.

That the securities involved in a number of the foregoing writs, judgments and decrees have already accepted the plan of composition hereinbefore described, but in the case of others the said writs, judgments or decrees are in full force and effect, and pending the final determination hereof an interlocutory order ought to issue staying and enjoining the continuation of the said writs, judgments and decrees, as the case may be, and placing temporarily in operation the plan of adjustment herein set out and provided for.

12 (12) That said plan of composition is fair and equitable and for the best interests of the creditors of your petitioner, and does not discriminate unfairly in favor of any creditor or class of creditors; that if the same is accepted and approved your petitioner will be able to meet the interest and sinking fund requirements of the said refunding bonds to be issued under said plan as the tax requirements to pay the same are so materially reduced from the present tax requirements as to be fair, reasonable and just and the taxpayers of your petitioner will be able to and will pay the taxes levied and assessed by your petitioner.

Wherefore, your petitioner prays that the Judge of said Court will enter an order approving this petition as properly filed under said amendment to the National Bankruptcy Act, to-wit, Sections 81, 82, 83 and 84, inclusive, of Title 11, U. S. C., and further ordering and adjudging that said petition complies with said Bankruptcy Act and has been filed in good faith; and also entering an order fixing the time and place for a hearing on said petition, said hearing to be held within ninety

(90) days from the date of said order, and prescribing the form of notice to be given to the creditors of your petitioner affected by said plan, specifying the manner in which claims and interests of creditors shall be filed in evidence on or before the date fixed for the hearing; and ordering and directing said notice to be published once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the Court, and in such other paper or papers having a general circulation among bondholders and bond dealers as may be designated by the Court, and ordering a copy of said notice to be mailed, postage prepaid, to each creditor of petitioner named in the petition at the address of such creditor given in the petition and
13 order,—said notice to be first published and the mailing thereof completed at least sixty (60) days before the date fixed for the hearing; that petitioner's plan of composition of its debts be finally approved and confirmed; that such hearings be had thereon and notices thereof given, and such proceedings be had and taken hereunder as are authorized and required by said Bankruptcy Act. That pending determination of the matter the Court enter an interlocutory decree providing that the plan of composition shall be temporarily operative with respect to all securities affected by the plan, and with respect to settlement, adjustment and collection of taxes and assessments affected by said plan, and that the payment of both principal and interest of the said securities shall be temporarily postponed,—i. e., such as have become due or which would otherwise become due, but that the same shall not become due and payable and the payment thereof be postponed during the period in which said decree shall remain in force; and that upon notice, the Judge enjoin and stay or dissolve, pending the determination of this matter, the operation and effect of the decrees, writs and judgments hereinbefore specifically

described and set forth; and for such other and further orders and decrees proper to be had in the premises.

CITY OF AVON PARK,
By R. F. SAPPINGTON,
Its Mayor Pro Tem.

Attest:

D. F. CANFIELD,
(Seal) Acting City Clerk.

T. A. McNICHOLAS,
HENRY L. JOLLAY,
Attorneys for Petitioner.

14 State of Florida,
County of Highlands.

R. F. Sappington, of lawful age, being duly sworn, says that he is Mayor Pro Tem of the City of Avon Park, Florida, the above named petitioner; that he has read the above and foregoing petition, and makes this verification for and on behalf of said petitioner and as such officer thereof; and that the allegations and statements therein contained are true.

(Signed) R. F. SAPPINGTON.

Subscribed in my presence and sworn to before me this 12th day of August, A. D. 1938.

(Signed) J. C. RAGSDALE,
Justice of the Peace, District
(Seal) One, Highlands County, Fla.

15 EXHIBIT A.

Refunding Plan
of City of Avon Park, Florida.

Section 1. Indebtedness of the City of Avon Park proposed to be affected by the provisions of this Refunding Plan comprises (a) all outstanding principal bonded indebtedness; (b) all accrued interest on the bonds proposed to be refunded hereunder to the date of the proposed Refunding Bonds, whether evidenced by matured interest coupons, or otherwise; and (c) bonds and coupons upon which judgments have been obtained against the City of Avon Park, which items are proposed to be refundable as if such judgments had not been obtained. The said indebtedness proposed to be refunded is more particularly described as follows:

Name of Issue	Date of Issue	Principal Amount Outstanding as of 7-1-37 Matured	Unmatured	Total Interest to 7-1-37
Street Bonds	6-1-16	None	$30,000	$10,000
Street Bonds	11-1-20	None	16,500	7,000
Street Bonds	5-1-22	None	47,000	19,000
Refunding Bonds	5-1-22	None	10,000	5,000
Park Improvement Bonds	5-1-22	None	5,000	3,000
Street Improvement Bonds	1-1-24	22,000	None	10,000
Street Improvement Bonds	1-1-25	6,000	None	3,000
Improvement Bonds, Issue of 1925	5-1-25	30,000	158,000	62,000
Refunding Bonds, Issue of 1925	5-1-25	11,000	27,000	30,000

(Bonds and interest accruals of the above described issues are proposed to be refunded by Series A and Series AA Refunding Bonds.)

Name of Issue	Date of Issue	Principal Amount Outstanding as of 7-1-37 Matured	Unmatured	Total Interest to 7-1-37
Street Improvement Bonds	12-1-25	58,000	None	25,000
General Improvement Bonds	10-1-26	None	323,000	138,000
Street Improvement Bonds	5-1-27	36,000	None	16,000
Refunding Bonds	1-1-29	20,000	68,000	39,000

(Bonds and interest accruals of the issues next above described are proposed to be refunded by Series B Refunding Bonds.)

Section 2. There has been legally authorized and the City of Avon Park proposes to issue general obligation Refunding Bonds of the City of Avon Park con-
16 taining a pledge of the full faith and credit of the City of Avon Park, said bonds to be in an aggregate principal amount equal to the principal amount of the City of Avon Park bonds (outstanding as of July 1, 1937) and all interest accrued thereon to July 1, 1937. Refunding Bonds will be deposited in escrow with The First National Bank of Chicago, Chicago, Illinois, and those prepared for exchange for the principal amount of the outstanding indebtedness will be subject to delivery to the holders of the securities proposed to be refunded in exchange therefor on the basis of par for par while Refunding Bonds prepared for exchange for the interest accrued to July 1, 1937, will be delivered to R. E. Crummer & Company, Fiscal Agent, from time to time as said R. E. Crummer & Company assembles the said evidences of the interest accruals in blocks of One Thousand Dollars ($1,000.00), or multiples thereof.

Section 3. Refunding Bonds proposed to be issued will be dated July 1, 1937, mature July 1, 1967, and bear interest, payable semi-annually, at the following rates:

Two percent (2%) per annum for a period of two (2) years from the date thereof;

Three percent (3%) per annum for the next succeeding six (6) years;

Four percent (4%) per annum for the next succeeding seven (7) years;

Five percent (5%) per annum thereafter.

Section 4. Refunding Bonds proposed to be issued will be callable at par upon any interest payment date prior to maturity. If the option to call the Refunding Bonds prior to maturity is used, provision is made that it will be exercised in the following manner:

The Refunding Bonds shall be drawn by lot from all of the ten outstanding Refunding Bonds. Notice of redemption, specifying the Refunding Bonds called, shall be filed at the place where the principal and interest of said Refunding Bonds are payable at least thirty (30) days prior to such redemption date. Notice of intention to redeem said Refunding Bonds shall be published once, not more than sixty (60) days, nor less than thirty (30) days prior to the redemption date, in at least two (2) publications, one of which shall be a newspaper having general circulation in Avon Park, Highlands County, Florida, and the other shall be a financial journal published in the City of New York, State of New York.

Section 5. In view of the fact that the City of Avon Park had boundary changes twice during the time it was issuing bonds and in view of the fact that Refunding Bonds can only be issued as continuations and extensions of original obligations, it has been necessary to provide for the issuance of the proposed Refunding Bonds in two

major series, namely, "A" and "AA" in one group and "B" in the other group. The original bonds proposed to be refunded by the respective series of Refunding Bonds are indicated in Section 1 hereof.

The above facts have necessitated the creation of separate interest and sinking fund tax levies for the two major series, and, in order that the full scope of these two separate provisions may be known, the applicable sections of the resolution adopted by the City Council of the City of Avon Park authorizing the issuance of the proposed Refunding Bonds are quoted in full as follows:

"That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of the said Series "A" and Series "AA" Refunding Bonds herein authorized to be issued, the said City hereby covenants and agrees with the holders of said Refunding Bonds that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1937 and 1938, there shall be included a levy of a current ad valorem tax on all property within the original area of said City, as defined by Chapter 6,662, Laws of Florida, Acts of 1913, subject to the levy and collection of such tax, sufficient to produce annually the sum of Ten Thousand Dollars ($10,000.00), including and deducting therefrom at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1939 to 1944, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Fifteen Thousand

Dollars ($15,000.00) including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1945 to 1951, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Twenty Thousand Dollars ($20,000.00) including and deducting therefrom at the option of said City any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that beginning with the annual budget and tax levy to be made in the year 1952 and continuing each year thereafter until all of said Refunding Bonds, Series "A" and Series "AA", and the interest thereon, have been retired, the annual interest and sinking fund current ad valorem tax levy shall be sufficient to produce not less than $30,000.00, including and deducting therefrom any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose.

"That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of the said Series "B" Refunding Bonds herein authorized to be issued, the said City hereby covenants and agrees with the holders of said Refunding Bonds that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1937 and 1938, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the area of said City as defined by Chapter 10,320, Laws of Florida, Special Acts of 1925, and Chapter 12,514, Laws of Florida,

Special Acts of 1927, subject to the levy and collection of such tax, sufficient to produce the annual amount of Thirty Thousand Dollars ($30,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1939 to 1944, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Twenty-five Thousand Dollars ($25,000.00) including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that beginning with the annual budget and tax levy to be made in the year 1945 and continuing each year thereafter until all of said Refunding Bonds, Series "B", and the interest thereon, have been retired, the annual interest and sinking fund ad valorem tax levy shall be sufficient to produce not less than Twenty Thousand Dollars ($20,000.00), including and deducting therefrom any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose.

"All such taxes shall be levied and computed upon the extended and finally equalized valuation of all property within said City as constituted at the time of the issuance of the respective issues of bonds refunded hereby, except only such property as was exempt from taxation under the laws and Constitution of Florida which were in force and effect at the time of the creation of the indebtedness proposed to be refunded hereunder. The taxes so levied shall be in addition to all other taxes by

or on behalf of said City, and the proceeds thereof are hereby appropriated and shall be used exclusively for the purpose for which the same are levied, and so long as any of said Refunding Bonds are outstanding, the respective annual tax levies shall be increased when necessary to provide sufficient funds for the actual interest and principal or sinking fund requirements of the year next succeeding that in which the budget is being made and prepared."

A provision is also included that, in case of failure or refusal of the City of Avon Park to perform any agreements or obligations to the holders of the said Refunding Bonds, or upon default in the payment of interest, the said City of Avon Park will have a period of six (6) months within which to correct the same, and upon the inability or refusal to do so within that period and upon the declaration in writing filed with said City of Avon Park by the holders of at least twenty-five per cent (25%) in principal amount of the Refunding Bonds then outstanding, all of said bonds will, at the option of the respective holders, revert to the original interest rate of the securities exchanged therefor, such reversion being effective from the date to which interest had been paid on the Refunding Bonds prior to the date of filing of the declaration of intention to exercise such option.

Section 6. Provision is made that, each six months after interest then due has been paid on said Refunding
19 Bonds and due allowance has been made for interest requirements due six months thereafter, making reasonable allowance for anticipated receipts, any surplus funds shall be used by the City of Avon Park for the purpose of purchasing for cancellation Refunding Bonds, which purchases are provided to be made in the following manner:

The City Council of the City of Avon Park shall designate a date, not less than thirty (30) nor more than forty-five (45) days from the time such date is designated, at which time the City Council will receive and consider in open session sealed offerings of said Refunding Bonds. The City Council shall give written notice of this date to any bondholders so requesting in writing. Notice of the time and place of receiving offerings shall be published once, not less than fifteen (15) days before the designated time, in at least two (2) publications, one of which shall be a newspaper having general circulation in the City of Avon Park, Highlands County, Florida, and the other shall be a financial journal published in the City of New York. All of the surplus funds available, as provided under the plan, shall be used to purchase bonds at the lowest offered price. If, however, the City Council shall be dissatisfied with any or all offers received, it shall have the option to reject any or all such offers, and, within thirty-one (31) days thereafter, readvertise for additional sealed offerings and purchase the bonds so readvertised for at the lowest offered prices to the extent of absorbing all funds available. It is further provided that, after each such advertised purchase, the City Council may privately purchase additional bonds with subseqent surplus accumulations, as long as private purchases may be made on such basis as to assure a higher income yield than the highest yield calculated on bonds purchased pursuant to advertisement.

Section 7. R. E. Crummer & Company has agreed with the City of Avon Park to defray all expenses involved in the following steps incident to the refunding:

1. Assembling the bonds proposed to be refunded;

2. Printing the Refunding Bonds;

3. Representing the City in legal proceedings to validate said Refunding Bonds;

4. Obtaining approving opinion of nationally recognized bond counsel upon the issuance and validity of Refunding Bonds, said counsel to be selected by said R. E. Crummer & Company;

5. All other expenses in connection with the refunding which may be approved by said R. E. Crummer & Company.

It is also provided in the plan that the City of Avon Park will retain counsel to represent it until the refunding proceedings have been completed, and R. E. Crummer & Company has agreed to indemnify the City of Avon Park for its costs in this connection, the total thereof to be in an amount to be agreed upon between the City of Avon Park and R. E. Crummer & Company.

Section 8. Provision is made that R. E. Crummer & Company shall be reimbursed for its services and costs incident to the refunding of the outstanding indebtedness of the City of Avon Park by assessing charges against the participating bondholders, the amount of such charges to be a matter between R. E. Crummer & Company and the bondholders participating in the plan. The charge has been set at $20.00 per $1,000.00 bond tendered for exchange, or ratable portion thereof in the case of bonds of less than $1,000.00 denomination.

Section 9. Provision is made that all taxes levied by the City for the year 1937, and subsequently, will be payable in legal tender only, but the City of Avon Park and R. E. Crummer & Company have agreed to cooperate in developing a reasonable course of procedure for the adjustment and collection of the reasonable maximum equity

of delinquent taxes for the years 1936, and prior, and special assessment liens, it being specifically agreed that for a period of twenty-four (24) months after the date of the first exchange of the said Refunding Bonds a par value of Refunding Bonds equivalent to the par value of Refunding Bonds issued for the purpose of refunding accrued interest will be kept available by R. E. Crummer & Company and held subject to the order of the City of Avon Park for use in paying taxes assessed by the City of Avon Park for the years 1936, or prior, or for the purpose of discharging any special assessment liens, and interest thereon, now outstanding and unpaid, said bonds to be delivered by R. E. Crummer & Company upon the order of the City of Avon Park at not exceeding fifty per cent (50%) of the face amount thereof for the first six (6) months; at not exceeding sixty per cent (60%) for the next succeeding six (6) months; at not exceeding seventy per cent (70%) for the next succeeding six (6) months; and at not exceeding seventy-five per cent (75%) for the next succeeding (6) months.

In view of the fact that the liquidation of the accumulated delinquent tax and special assessment items is an essential element in the complete rehabilitation of the bonded debt situation of the City of Avon Park, R. E. Crummer & Company proposes at the time of exchange to pay for all accrued interest to July 1, 1937, at the equivalent of a sum of money which would be payable if said interest accruals (coupons and accrued interest) evidenced interest at the rate of two (2%) per cent per annum, and will itself hold interest adjustment bonds available subject to use in the payment of delinquent taxes and special assessment liens, as hereinabove stated.

Dated this twenty-third day of April, 1938.

CITY OF AVON PARK,
FLORIDA.

21 EXHIBIT B.

Avon Park, Page 1.

PETITIONER'S EXHIBIT #3.

Minutes of Adjourned Regular Meeting,
July 17, 1937, 8:00 P. M.

Councilman Albert Garrett, F. S. Jordan and E. F. Sappington were present, and the meeting was called to order by Mr. Garrett who acted as chairman in the absence of W. T. Hall and President S. J. Pendleton.

The following Resolution was introduced and, upon being read in full, was, upon motion of F. S. Jordan, which motion was duly seconded by E. F. Sappington, adopted by the following vote:

Ayes: Albert Garrett, E. F. Sappington, F. S. Jordan.

Nayes: None.

Absent: W. T. Hall, S. J. Pendleton.

Not Voting: None.

Resolution.

Whereas, The City of Avon Park has long been in default with regard both to principal and interest of its bonded indebtedness.

And Whereas in the judgment of the Council it is necessary that the obligations of the City including bonded indebtedness, interest in default, judgments against the City, and all other debt service be refunded,

And Whereas R. E. Crummer & Company of Orlando, Florida, have from time to time conferred with the City concerning the refunding of the said debt service and have submitted to the City a contract whereby they agree to refund the same upon certain terms and conditions made in the said contract.

And Whereas the City Council is of the opinion that it is the benefit of the citizens and the taxpayers of the City of Avon Park, that the said contract be entered into and accepted by the City of Avon Park.

22 Be It Resolved by the City Council of the City of Avon Park, State of Florida, in session duly assembled:

Section 1. That this Council does hereby approve, adopt, and confirm that certain agreement set forth in Section 2 hereof: the President of the City Council and the Mayor of the City of Avon Park be, and they are hereby, directed to execute said agreement for and on behalf of the City of Avon Park, and the City Clerk be, and he is hereby, directed to attest the signature of said President and Mayor on said agreement and affix the seal of the City of Avon Park thereto.

Section 2. That the agreement approved, adopted, and confirmed in Section 1 hereof shall be as follows:

Agreement.

This Agreement, made and entered into this 17th day of July, A. D. 1937, by and between R. E. Crummer & Company, a Delaware Corporation with principal office at Orlando, Florida, (hereinafter sometimes referred to as "First Party" and sometimes referred to as "Fiscal Agent") and the City of Avon Park, Florida, (hereinafter some-

times referred to as "Second Party" and sometimes referred to as the "City".)

Witnesseth.

In consideration of the sum of one (1.00) Dollar paid by each of the parties hereto to each other, receipt of which is hereby mutually acknowledged, and in further consideration of the mutual benefits flowing to the respective parties hereto, it is hereby mutually understood and agreed as follows:

Section 1. That First Party shall endeavor to accomplish a refunding, by a par for par exchange, of the following refundable funded indebtedness (hereinafter referred to as "Bonds") in accordance with the terms and conditions hereinafter set forth:

23 (A) All outstanding principal of the funded indebtedness of the City of Avon Park, which is generally and approximately described as follows:

Date	Rate	Designation	Original Amount of Issue	Amount Outstanding
6-1-16	5%	Street Improvement.	$30,000.00	$30,000.00
11-1-20	6%	Street Improvement.	20,000.00	20,000.00
5-1-22	6%	Refunding	10,000.00	10,000.00
5-1-22	6%	Park Improvement..	5,000.00	5,000.00
5-1-22	6%	Street Improvement.	60,000.00	47,000.00
1-1-24	6%	Street Improvement.	70,000.00	9,000.00
1-1-25	6%	Street Improvement.	18,000.00	6,000.00
5-1-25	6%	General Improvement	240,000.00	188,000.00
5-1-25	6%	Refunding	40,000.00	38,000.00
12-1-26	6%	Street Improvement.	140,000.00	42,000.00
10-1-25	6%	General Improvement	355,000.00	323,000.00
5-1-27	6%	Street Improvement.	60,000.00	36,000.00
1-1-29	6%	Refunding	175,000.00	85,000.00

It is understood that the indebtedness to be considered hereunder will be the exact amount of indebtedness found to be outstanding and unpaid when the bond registers of the identified issues of bonds have been carefully balanced.

(B) All interest accrued and unpaid on the bonds identified in (A) of this Section to the date of the proposed Refunding Bonds, whether evidenced by matured interest coupons or by accrued interest on matured bonds. Refunding bonds allocated to be exchanged for evidences of accrued and unpaid interest shall be delivered as First Party is able to assemble said evidences in blocks of $1,000.00, the manner and method of assembling said evidences to be a matter wholly between First Party and bondholders participating in the plan outlined herein.

24 Section 2. That Second Party shall, by proper action, cause Refunding Bonds to be authorized and validated by the Circuit Court, or the Supreme Court of Florida, in the event of any appeal, in an amount sufficient to permit an exchange of securities on the basis of par for par, using such procedure and forms therefor as shall be approved by nationally recognized bond attorneys; that said Refunding Bonds shall be executed in the manner required by law and placed on deposit in escrow with a bank to be selected by First Party under instructions from Second Party, or its proper officials, that said Refunding Bonds shall be delivered in exchange for securities described in Section 1 hereof, this contract being sufficient authority for said officials to make said deposit under usual forms for the purpose, said forms to be prepared by First Party and approved by the attorney for Second Party.

Section 3. That said Refunding Bonds shall be dated July 1, 1937, and mature according to the following schedule: Thirty years after their date.

Section 4. That said Refunding Bonds shall bear interest, payable semi-annually, at the following rates:

Two (2%) percent per annum for the first two (2) years after date thereof; three (3%) per cent per annum for the next succeeding six (6) years; four (4%) percent per annum for the next succeeding seven (7) years; five (5%) per cent per annum thereafter.

Exception: Where any of the above annual interest rates exceed the annual interest rates on any particular bonds proposed to be refunded, the lower rate on said particular original bonds shall be the maximum rate on the particular Refunding Bonds exchanged therefor.

Section 5. (4) That all of said Refunding Bonds shall be callable at par plus accrued interest upon any interest payment date prior to maturity.

(B) That the option to call the Refunding Bonds prior to their respective maturity dates, if used, shall be exercised in the following manner:

(a) The bonds shall be drawn by lot by the governing authority of the Second Party;

(b) The respective lots shall consist of all of the then outstanding bonds;

(c) Notice of said redemption, specifying the bonds called shall be filed at the place of payment of the principal and interest of said Refunding Bonds at least thirty (30) days prior to the redemption date and notice of intention to redeem said bonds shall also be published once, not more than sixty (60) nor less than thirty (30) days prior to the redemption date, in at least two publications one of which shall be a newspaper having general cir-

culation in Avon Park, Florida, and the other shall be a financial journal published in the City of New York, New York.

Section 6. That, for the purpose of adequately providing for the payment of the interest on said Refunding Bonds as it matures and for the creation of a sinking fund for the retirement of all of said Refunding Bonds as they mature, the proceedings authorizing the issuance thereof shall:

(A) Conform to the tax provision requirements of Chapter 18,772 of the Laws of Florida, Acts of 1931. (C. G. L.-2383) and such other law or laws as shall be required by the approving bond attorneys provided for herein in order to accomplish the full purposes hereof;

(B) Contain legally effective obligations and covenants on the issuing taxing unit to and in favor of the holders of the Refunding Bonds that

(a) In the annual budgets to be prepared and made in each of the years 1937 to 1951, both inclusive, there shall be included an appropriation in an amount sufficient to produce a sum of Forty Thousand ($40,000.00) Dollars, including and deducting therefrom any revenue other than from ad valorem taxes which may be

(b) In the annual budgets to be prepared and made in the year 1952, and annually thereafter until all of said Refunding Bonds, and interest thereon, have been retired, there shall be included an appropriation in an amount sufficient to produce a sum of Fifty Thousand ($50,000.00) Dollars, including and deducting therefrom any revenue other than from ad valorem taxes which may be available and is actually so applied.

(C) Provision shall be made for the levying of an ad valorem tax in an amount sufficient to meet that portion of the respective annual appropriations which may be payable from ad valorem taxes, such taxes to be levied and computed upon the extended and finally equalized assessed valuation of property of the issuing unit, except only such property as was exempt from taxation at the time the original bonds proposed to be refunded were issued;

(D) The respective annual tax levies shall be increased when necessary to provide sufficient funds for the payment of the interest and principal maturities of the year next succeeding that in which any particular budget is being made and prepared;

(E) In the event of a failure or refusal of the governing authority of the issuing taxing unit to perform any of the obligations assumed thereunder to the holders of Refunding Bonds, or upon a default in the payment of interest on said Refunding Bonds, then upon the declaration in writing filed with Second Party, through its Clerk, by the holders of at least twenty-five (25%) per cent in principal amount of the Refunding Bonds outstanding upon the happening of such failure, refusal, or default, said Refunding Bonds shall, at the option of the respective holders, revert to the original interest rate of the securities exchanged therefor, but such reversion shall only be effective from the date to which interest had been paid on said Refunding Bonds prior to the date of the filing of the declaration of intention to
27 exercise such option, and if the right to the higher interest rate accrues, the higher rate of interest will be evidenced in the manner then provided by law; Provided, said bonds shall not revert to the original interest rate unless the failure, refusal, or default is not

corrected within a period of six (6) months after its happening.

Section 7. That Second Party shall take such action as may be necessary to consummate the refinancing program herein authorized to the end that the proceedings authorizing the issuance of the Refunding Bonds, or the Refunding Bonds themselves, shall—

(A) Be general obligations of the issuing taxing unit;

(b) Contain a pledge of the full faith and credit of said issuing taxing unit for the prompt payment of the principal and interest of said Refunding Bonds according to their tenor;

(C) Provide for payment in legal tender of the United States of all taxes provided to be levied for the payment of said Refunding Bonds and interest thereon;

(D) Be continuations, extensions, mergers, and renewals of the bonds proposed to be refunded;

(E) Provide that all rights and remedies which were available for the support and enforcement of the bonds proposed to be refunded will continue and remain available for the support and enforcement of the Refunding Bonds issued in lieu thereof;

(F) Provide for the holders of the Refunding Bonds to be subrogated to the rights of the holders of the bonds exchanged therefor if said Refunding Bonds should be held invalid or unenforceable.

(G) Provide that any surplus which may be available in the interest and sinking fund account of the issuing units each six months after pay-

ment of interest and principal then due (after making due allowance for interest and principal maturities due at the next semi-annual interest payment period and making reasonable allowance for anticipated receipts) shall be used by the governing authority of second party (hereinafter referred to as "governing authority") for the purpose of purchasing Refunding Bonds, said purchases to be made in the following manner:

(a) Within sixty (60) days after the surplus is ascertainable, the governing authority shall designate a date, which shall be not less than thirty (30) nor more than forty-five (45) days from the time such date is designated, at which time the governing authority will receive and consider in open session sealed offerings of Refunding Bonds herein authorized;

(b) The governing authority shall give written notice of this date to the Fiscal Agent, and any bondholders so requesting in writing;

(c) Notice of the time and place of receiving said offerings shall be published once, not less than fifteen (15) days before the designated time, in at least two publications, one of which shall be a newspaper having general circulation in Avon Park, Florida, and the other shall be a financial journal published in the City of New York, New York;

(d) All available funds, as hereinabove determined, shall be used to purchase bonds offered at the lowest prices;

(e) If the governing authority shall be dissatisfied with any or all offers received upon first advertisement, then it shall have the option to reject any or all such offers, and within thirty-one days after such rejection,

it shall readvertise for additional sealed offerings, whereupon the governing authority shall purchase the bonds offered at the lowest prices upon such readvertisement, absorbing all surplus funds available.

(f) After such advertised purchase, the governing authority may privately purchase, additional bonds with subsequent surplus accumulations as long as private purchases may be made on such basis as to assure a higher income yield than the highest yield calculated on bonds purchased pursuant to advertisement;

(g) If no offering can be obtained at or below the callable price, the governing authority shall proceed to call bonds to absorb the available surplus, said call to be effective at the next interest payment period after effort has been made to purchase bonds;

(h) At the option of the governing authority, purchases may be made to absorb surplus accumulations more often than required by the schedule set forth above.

Section 8. (A) That First Party shall defray all expenses incident to: (a) assembling the bonds herein proposed to be refunded; (b) printing the said Refunding Bonds; (c) the representation of Second Party in legal proceedings to validate said Refunding Bonds; (d) obtaining the approving opinion of nationally recognized bond counsel upon the procedure used for the issuance and validation of said Refunding Bonds, said counsel to be selected by First Party; (e) all other expenses in connection herewith which may be approved by First Party; (f) the cost of retaining special counsel to assist the City Attorney in determining the legal responsibility of the various properties which have at one time or another been

within the supposed corporate area of Avon Park, Florida, for debt service taxed, said special counsel to be selected by First Party.

(B) That, within one week from the date hereof, Second Party shall designate and retain counsel to represent it in all matters connected herewith until the purpose of this contract have been fulfilled, and first Party shall indemnify Second Party for its cost in this connection, the total cost thereof to be in an amount to be agreed upon between the First Party and the attorney selected by Second Party.

Section 9. That First Party shall be reimbursed and compensated for expenses incurred and services rendered, respectively, in connection herewith in the following manner:

By assessing charges against security holders who accept Refunding Bonds under the terms hereof, the amount of said charges being a matter wholly between First Party and security holders who accept said Refunding Bonds.

Section 10. That general provisions shall apply to this contract as follows:

(A) That, for a period of three years from date thereof, First Party is granted exclusive authority to act for and on behalf of Second Party in all matters connected with, or relating to, the exchange of the presently outstanding securities for Refunding Bonds, provided first Party had, within one year from date hereof, obtained the consent of the holders of seventy-five per cent, or more, of the bonds proposed to be refunded hereunder to participate in the plan of Refunding set forth herein.

(B) That any judgments entered on any securities subject to refunding hereunder shall be considered as subject to refunding as if said judgments had not been obtained.

(c) That, for a period of 24 months after date hereof, said First Party shall keep available a par value of bonds equal (pending completion of exchanges, coupons may be substituted) to the par value of Refunding Bonds authorized to be issued in exchange for evidences of accrued interest for the following purposes:

Said bonds shall be made available upon the order of Second Party for use in the payment of delinquent debt service taxes for the years 1935, or prior, or special assessment liens at the following percentages of the par amount thereof during the identified periods; 50% for the first six months; 60% for the next succeeding six months; 70% for the next succeeding six months; and 75% for next succeeding six months.

31 (D) That the parties hereto will jointly use their best efforts to induce holders of the presently outstanding bonds included within the scope hereof to participate in the refunding program set forth herein, and, until otherwise mutually agreed upon, subject to the limitations herein set forth, the plan herein set forth shall constitute the exclusive refunding program for said Second Party.

(E) That whenever and as often as the First Party shall request in writing to be informed as to the financial affairs of the Second Party, such as the amount of tax levies, collections, delinquencies, the amount of revenue and income available from sources other than from ad valorem taxes, the amount of bonds issued, outstanding or retired, to furnish such information promptly, and to give due consideration to any recommendations of the First Party with regard to such financial affairs.

(F) That, if, during the life of this contract, any of the outstanding bonds subject to refunding, or coupons appurtenant thereto or clipped therefrom, shall be presented for payment, or suit instituted thereon or in respect thereto, Second Party agrees that the First Party will be notified before any terms of settlement are agreed upon between Second Party and any such bondholder.

(G) That, if any portion of this contract shall be legally declared inoperative or void, said contract shall, at the option of First Party, be considered as fully operative without such inoperative or void portion.

In Witness Whereof, First Party has executed this instrument in duplicate, under its hand and seal, and Second Party has caused this instrument to be executed in duplicate in its name under due authority and has caused the same to be signed by the President of the City Council and Mayor of the City of Avon Park, and the seal of said City of Avon Park to be duly affixed hereto, attested by the City Clerk, all as of the
32 17th day of July, A. D. 1937.

R. E. CRUMMER & COMPANY,
(Seal) By R. E. CRUMMER, President,
First Party.

Attest:
E. RICHARDSON,
Secretary.

CITY OF AVON PARK,
FLORIDA,
(Seal) By S. H. PENDLETON,
President of the City Council,
By M. E. COVINGTON, Mayor,
Second Party.

Attest:
F. W. SHOCKLEY,
City Clerk.

Be It Further Resolved: That S. Colquitt Pardee be retained as counsel to represent the City in all Matters connected with said refunding program until the same shall have been completed; the appointment of said attorney being in accordance with Section VIII B of said Contract.

State of Florida,
County of Highlands.

The undersigned, City Clerk of the City of Avon Park of the County and State aforesaid, does hereby certify that the above and foregoing is true and correct copy of a resolution adopted by the City Council of said City on the 17th day of July, A. D. 1937.

Witness my hand and the seal of said City of Avon Park this 3rd day of August, A. D. 1937.

F. W. SHOCKLEY,
(Seal) City Clerk.

33 EXHIBIT C.

PETITIONER'S EXHIBIT #5.

Excerpt from Minutes of Regular Adjourned Meeting of the City Council of the City of Avon Park, Florida, held August 12, 1938, at 5:00 o'clock P. M.

Councilmen Will Bennett, L. D. McGiboney, and R. F. Sappington being present, the meeting was called to order by Councilman Sappington, who presided at the meeting and in the absence of the Mayor, was elected Mayor Pro Tem. There were present also at said meeting D. F. Canfield, Acting City Clerk, and T. A. McNicholas, City Attorney.

The following resolution was introduced, and upon being read in full, was, upon motion of Councilman Bennett, which motion was duly seconded by Councilman McGiboney, adopted by the following vote:

Ayes: Will Bennett, L. D. McGiboney, R. F. Sappington.

Nays: None.

Absent: E. W. Hartt and A. McKee Elwell.

Resolution.

Whereas, the City of Avon Park has heretofore adopted a detailed plan for the composition of its bonded indebtedness, and has submitted the same to its creditors affected thereby for the purpose of securing the consent of its said creditors to the filing of proceedings in the United States District Court for the Southern District of Florida under the National Bankruptcy Act as amended, as the same applies to municipal corporations, to the end of effectuating and perfecting the plan of composition; and

Whereas, the creditors of said city affected by said plan owning more than 51 per centum in amount of each class of the securities affected by the plan have accepted in writing said plan of composition; and

Whereas, it is for the best interest of said city and its creditors that said plan be finally approved and put into force and effect; and

Whereas, there has been presented and considered the petition of said City of Avon Park for filing in said United States District Court for the commencement of said proceedings in said Court;

Now, Therefore, Be It Resolved by the City Council of said City of Avon Park, Florida, that said City commence said proceedings in said Bankruptcy Court in accordance with the provisions of said detailed plan of composition of its debts, and in accordance with the provisions of said Bankruptcy Act as amended, and pursuant to the authority vested in said city by Chapter 15,878 of the Laws of Florida of 1933; and that the Mayor Pro Tem and the Acting City Clerk of said City be and they are hereby authorized and directed to sign and seal said petition and the said Mayor Pro Tem to verify the same for and on behalf of said City, and that said petition thereupon be forthwith filed in said United States District Court for the Southern District of Florida.

34 Acceptance of Refunding Plan.

The undersigned creditor of the City of Avon Park, Florida, being the owner and holder of the bonds and/or interest coupons of said City listed and described below, hereby accepts, consents and agrees to the plan of composition of debts of said City of Avon Park, Florida, shown in and by the Refunding Plan submitted to the undersigned and bearing date the 23rd day of April, 1938.

(Upon request of R. E. Crummer & Company, The First National Bank of Chicago is authorized to exhibit the described securities to the United States District Court in which Municipal Bankruptcy proceedings are being brought by the City of Avon Park.)

Dated this 3rd day of May, 1938.

Creditor:

J. O. ADAMS.

Address: 400 Roosevelt Bldg., (Street), Los Angeles. (City), Calif., (State).

Name of Issue	Date of Issue	Maturity Date	Bond Numbers	Interest Represented by Coupons to 7-1-37	Interest not Represented by Coupons to 7-1-37
Gen. Imp. 6%	10-1-26	10-1-56	132/134	$1,260.00	$45.00

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35 The Court entered an order on August 15, 1938, approving the Plan of Composition and appointing Allen E. Walker of Winter Haven, Florida, as Special Master. The order is omitted from this transcript.

Certificate of Publication and mailing of Notices was filed September 23, 1938. Copy of the certificate and proofs of publication are omitted from this transcript.

Petition of the City of Avon Park for stay order was filed on October 8, 1938, said petition being in the following form, to-wit:

36 PETITION.

(Title Omitted.)

Comes now the City of Avon Park, Florida, a municipal corporation, and states that heretofore, to-wit, on the 15th day of August, 1938, said City of Avon Park filed a petition in bankruptcy in this Court praying for a composition of its debts on the basis of a plan submitted therewith, and an order was made on said date providing, among other things, that said plan of composition be temporarily operative with respect to all securities affected thereby, and with respect to the collection and adjustment of taxes affected by the plan; that there are now pending against said city of Avon Park certain suits, to-wit:

In the District Court of the United States, in and for the Southern District of Florida, Tampa Division, the following suits:

Lawrence W. Rittenoure v. City of Avon Park, No. 3371-T-Civil, Final Judgment for $63,352.00 and costs of $12.22, awarded ....., 1936, and alternative writ of mandamus issued thereon June 19, 1936;

Security Benefit Association v. City of Avon Park, No. 3350 T Civil, Final Judgment for $13,294.40 awarded October 11, 1935, and peremptory writ of mandamus issued January 22, 1937. No return to said writ.

United Mutual Life Insurance Company v. City of Avon Park, No. 3349 T Civil, Final Judgment for $13,942.50 awarded October 1st, 1935, and peremptory writ of mandamus issued January 22, 1937, for millage sufficient to pay said judgment;

William E. Sweet v. City of Avon Park, No. 3387 T Civil final judgment for $9952.80 awarded December 16, 1935, and peremptory writ of mandamus issued Janu-
37 ary 22, 1937.

Roger W. Babson v. City of Avon Park, No. 3137 T Civil final judgment for $6,114.82 plus $17.62 costs, awarded May 30, 1933, and peremptory writ of mandamus issued March 15, 1937.

Vermont Investment Company v. City of Avon Park, No. 3451 T Civil, Final Judgment for $34,606.40, plus costs of $17.58, awarded June 4, 1936, and writ of mandamus issued September 10, 1936;

Women's Benefit Association v. City of Avon Park, No. 3351 T Civil, Final Judgment for $29,090.00, plus $12.18 costs, awarded August 2, 1935, and writ of mandamus issued for the levy of 3½ mills on the 1935-1936 tax roll;

And in the Circuit Court of the Tenth Judicial Circuit of Highlands County, Florida, as follows:

Gulf Life Insurance Co. v. City of Avon Park No. ....., Final Judgment for $2,847.67, plus $10.50 costs, awarded April 12, 1934.

Charles B. Prettyman, et al., as Trustees, v. City of Avon Park, No. ....., Final Judgment for $9,778.66, plus costs of $10.75, awarded October 20, 1933, and writ of mandamus issued November 6, 1933, requiring a tax levy to pay said judgment.

First National Bank of Gainesville v. City of Avon Park, No. ....., Final Judgment for $6,610.55, plus $12.25 costs awarded November 10, 1932.

First National Bank of Gainesville v. City of Avon Park No. ....., Final Judgment for $5421.24, plus $11.60 costs awarded April 18, 1933.

And petitioner anticipates that new and additional suits may be instituted against it during the pendency of the bankruptcy proceedings; that in certain of the suits hereinabove mentioned final judgments have been entered and executions issued, and in others of said suits writs of mandamus have been awarded requiring the levy and collection of taxes; that the continuance in force and effect of said judgments and writs prevents the City from operating under the plan of composition as contemplated by the order heretofore made on the 15th day of August, 1938, and as contemplated by the law, pending the final determination of the merits of the said petition and of said plan; that the refunding plan, while by said
38 order made temporarily effective, cannot be completely so unless further proceedings in the suits hereinbefore listed and described are stayed, and unless

the parties plaintiff thereto be enjoined from prosecuting any further proceedings therein.

Wherefore petitioner prays that the Court enter an order staying all actions now pending, as hereinabove described and set forth, and enjoining the institution of any actions hereinafter against the petitioner upon any of the securities involved in said plan of composition, of whatever nature or kind, until the further order of this Court.

T. A. McNICHOLAS,
HENRY L. JOLLAY,
Attys. for Petitioner.

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39 Notice of hearing on petition for stay order was filed October 7, 1938. A copy of said notice is omitted from this transcript.

The petition to vacate stay order and objection to the plan of composition by Roger W. Babson was filed October 14, 1938.

Objections and exceptions by Lawrence W. Rittenoure to the petition for a stay order were filed Oct. 17, 1938. Copy thereof is omitted.

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40 Stay Order was filed October 17, 1938, said order being in the following form, to-wit:

41 ORDER.

(Title Omitted.)

This cause coming on for further hearing on the petition of the City of Avon Park, Florida, debtor, for an order staying all actions and proceedings now pending against

the City of Avon Park, and enjoining the institution of any actions hereafter against said city upon any of the securities involved in the plan of composition described in these proceedings until further order of this Court, and it appearing to the Court that due notice of the setting down of said petition for hearing on this date has been given, and the Court having read said petition, and after argument of counsel, and being advised in the premises:

It is Thereupon Ordered, Adjudged and Decreed that any further proceedings against the City of Avon Park, Florida, debtor, in the following listed and described suits, be and the same are hereby stayed pending the further order of this Court:

In the District Court of the United States, in and for the Southern District of Florida, Tampa Division, the following suits:

Lawrence W. Rittenoure vs. City of Avon Park, No. 3371-T-Civil, Final Judgment for $63,352.00 and Costs of $12.22, awarded ....., 1936, and alternative writ of mandamus issued thereon June 19, 1936;

Security Benefit Association vs. City of Avon Park, No. 3350, Final Judgment for $13,294.40 awarded October 11, 1935, and peremptory writ of mandamus issued January 22, 1937. No return to said writ;

United Mutual Life Insurance Company vs. City of Avon Park, No. 3349-T-Civil, Final Judgment for $13,942.50 awarded October 1, 1936, and peremptory writ of mandamus issued January 22, 1937, for millage sufficient to pay said judgment;

William E. Sweet vs. City of Avon Park, No. 3387-T-Civil, Final Judgment for $9,952.80 awarded December 16, 1935, and peremptory writ of mandamus issued January 22, 1937;

Roger W. Babson vs. City of Avon Park, No. 3137-T-Civil, Final Judgment for $6,114.82, plus $17.62 costs, awarded May 30, 1933, and peremptory writ of mandamus issued March 15, 1937;

Vermont Investment Company vs. City of Avon Park, No. 3451-T-Civil, Final Judgment for $34,606.40, plus costs of $17.58, awarded June 4, 1936, and writ of mandamus issued September 10, 1936;

Women's Benefit Association vs. City of Avon Park, No. 3351-T-Civil, Final Judgment for $29,090.00, plus $12.18 costs, awarded August 2, 1935, and writ of mandamus issued for the levy of 3½ mills on the 1935-1936 tax roll.

And in the Circuit Court of the Tenth Judicial Circuit of Highlands County, Florida, as follows:

Gulf Life Insurance Company vs. City of Avon Park, No. ....., Final Judgment for $2,847.67, plus $10.50 costs, awarded April 12, 1934;

Charles B. Prettyman, et al., as Trustees, vs. City of Avon Park, No. ....., Final Judgment for $9,778.66, plus costs of $10.75, awarded October 20, 1933, and writ of mandamus issued November 6, 1933, requiring a tax levy to pay said judgment;

First National Bank of Gainesville vs. City of Avon Park, No. ....., Final Judgment for $6,610.53, plus $12.25 costs, awarded November 10, 1932;

First National Bank of Gainesville vs. City of Avon Park, No. ....., Final Judgment for $5,421.24, plus $11.60 costs, awarded April 18, 1933.

43 It is Further Ordered, Adjudged and Decreed that the institution of any actions hereafter upon any of the securities involved in said plan of composition, of whatever nature, against said City of Avon Park, be enjoined until further order of this Court.

Done and Ordered in Chambers at Orlando, Florida, this 17th day of October, A. D. 1938.

ALEXANDER AKERMAN,
Judge of said Court.

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44 Stipulation extending time to answer petition was filed October 22, 1938. Copy thereof is omitted.

M. M. Smith, C. C. Smith and R. O. Smith filed Objections to the Plan of Composition on October 24, 1938. A copy thereof is omitted.

Motion to Dismiss Petition and Answer of Respondent Creditor, Lawrence W. Rittenoure, was filed October 16, 1938, copy of said motion being as follows, to-wit:

MOTION TO DISMISS PETITION AND ANSWER OF RESPONDENT CREDITOR, LAWRENCE W. RITTENOURE.

Filed 10/28/38, Winter Haven, Fla., Allen E. Walker.

45 (Title Omitted.)

The respondent, Lawrence W. Rittenoure, by his counsel undersigned, moves the Court to dismiss the petition of

the City of Avon Park, Florida, praying for composition of debts under Sections 81, 82, 83 and 84 of Chapter 9 of the Acts of Congress relating to Bankruptcy, of Avon Park, Florida, a municipal corporation, so far as said petition is directed to this respondent, upon the following grounds:

1. That it affirmatively appears from the petition that this respondent has a final judgment dated more than four months prior to the filing of said petition and it is admitted that an alternative writ of mandamus has been issued upon said judgment.

2. That it affirmatively appears that this respondent by reason of said judgment and alternative writ has obtained a vested right which renders this respondent immune from the provisions of the said Bankruptcy Act.

3. That the contract for refunding, between the Fiscal Agent and the Petitioner, contemplates, as a general provision thereof, the destruction, without his consent, of this Respondent's rights as a judgment creditor.

46 4. That the petition is fatally defective in not clearly specifying the extent of the territory designated as the "taxing unit" referred to in paragraph (A) of Section 7 of the Petitioner's contract with the Fiscal Agent.

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47 ANSWER.

The respondent, Lawrence W. Rittenoure, without waiving his foregoing motion to dismiss the bankrupt's petition, for his answer to said petition says:

1. As to the allegations of the petitioner in paragraph 4, this respondent says that the tax records of the said

petitioner in bankruptcy are in such chaotic condition that he has not been able to obtain from the present city officials, or by any competent records in their office, bases for the facts set forth in said paragraph of said bankrupt's petition. In particular, respondent shows that, as to the "amounts collected" referred to in the said paragraph, it affirmatively appears that a gross sum in the amount of $206,696.79 as real estate foreclosed by petitioner is included among these sums for the several years 1926 to 1937, inclusive, but the petition does not state how this sum was apportioned among the said several years, nor is it stated how the sum was arrived at. Upon oral information received from the office of petitioner, this respondent alleges that the sum of $206,696.79 represents the gross amount of liens against the several properties foreclosed for delinquent taxes during the period of time from 1934 and subsequently, together with all expenses and costs in connection with said suits and that said sum has no necessary relation to the value of the assets thus obtained.

With further reference to the said allegations of said petition relative to "amounts collected" for the several years indicated therein, Respondent shows to the Court that the sole resources of the City are its taxing
48 power and a small sum derived from fines and forfeitures; that almost all of the amounts collected in taxes for the several years is necessarily used for the operating expenses of the City and that no statement is contained at any place in the said petition as to the amount of money necessary to said City for its operating expenses. Respondent alleges upon information received from Petitioner's fiscal officers that the operating expenses of said city were, for 1936, approximately $35,735.81, of which $882.95 was derived from fines and for the year 1937, the said expenses was $31,992.91, of which $714.50 came from fines.

Respondent further alleges that a large part of the respective aggregate "amounts collected" represents collections in bonds, not cash, and is therefore not available to creditors, as was represented by Petitioner in its petition of February 15th, 1937, hereinafter referred to.

2. With further reference to said paragraph 4, Respondent shows to the Court, with reference to the assessment roll, that the territory of the said petitioner liable to assessment for the payment of the said bonds is composed of three tracts of land, as shown by said petition. The original town created under Chapter 6662, consisted of 1440 acres, including all of Section 22, and adjacent territory in Sections 14, 15, 23, 26 and 27, T. 33 S. Range 28 East. This is the territory termed Zone "A" in the said petition. By Chapter 10320, the City of Avon Park was created and its territory extended to the extent of approximately thirty-six square miles, or 22,040 acres, comprising all of Township 33, Range 28 East, including lakes;
49 that by virtue of the said extension of territory the area of the bankrupt was thus increased by some 20,600 acres over the original area of 1440. Subsequently the limits were again changed by reducing the area to approximately 2620 acres, including lake areas. This area includes the original area together with certain lands adjacent thereto, and constitutes the present city territory. All lands in said township not included within the present area, comprising about 19,420 acres are the "outlying territory" hereinafter called "Territory C."

4. Respondent shows to the Court that the said outlying area thus constitutes a greater part of the area liable to the payment of part of the indebtedness sought to be refunded and that such area has for a great many years last past been involved in litigation, originating and now pending in the Florida Supreme Court, in connection with a quo warranto proceeding brought in said Court by certain

taxpayers in the said outlying and disputed territory; that no substantial defense to the same has been made by the petitioning bankrupt; that by decision of the Supreme Court of Florida, dated the 11th day of December, 1934, reported in 158 So. 159, text 164, Circuit Judge William J. Barker, of Sebring, Florida, was appointed Commissioner of the Supreme Court to take the testimony which might be involved in this case and report the same to the Supreme Court. This respondent alleges that although some testimony has been taken before Judge Barker, nothing else has been done since the said appointment to the present time, except that the petitioner has secured the written consent of two of the
50 relators in said suit of quo warranto for the dismissal of the same. Respondent alleges that this suit was filed in the Supreme Court many years ago and prior to November 10, 1932, at which time a demurrer to respondent's answer was sustained by the Supreme Court of Florida in its decision reported in 144 So. 306. From all of which facts this respondent alleges that the petitioner has not been in good faith in attempting to enforce collections of its taxes for debt service from the larger part of the area liable to the payment of the same.

5. Further answering said paragraph 4, respondent shows to the Court that prior to 1936, debt service collections were not separated from taxes levied for operating expenses, wherefore, it is not possible to determine from the books of said city what funds were properly applicable to the claims of creditors.

6. That for the year 1936 referred to in said paragraph, the total assessment roll was, as stated, $2,748,953.00, of which Territory "A" was assessed in the sum of $1,-168,917.00; Territory "B" $486,136.00 and Territory "C" $1,093,900.00; that a twenty mill levy was made for debt service on Territory "C", amounting to $21,978.00, of

which $1,529.80, or less than 7% was actually collected; that a thirty-four mill levy was made on Territory "A" for debt service, amounting to $39,743.18; that the assessed value of Territory "B" was $486,136.00, upon which a twenty mill levy was made, amounting to $9722.72. The total levies were therefore $71,443.90 for debt service, of which $4,390.00 was collected, which amounts to a collection of 6.1% of the total debt service levy.

51 7. That for the year 1937, Territory "C" was again assessed for $1,093,900.00, on which a levy was made of twelve mills, amounting to $13,126.80, of this amount $1420.73 was collected, making a debt service collection of 10.6% of the levy; that Territory "B" was assessed for $421,052.00, against which a twelve mill levy was made, amounting to $5,052.62 for debt service; that Territory "A" was assessed for $989,640.00, against which a twenty mill levy was made for debt service, amounting to $19,792.40. That the aggregate debt service levy for 1937 was, therefore, $37,971.82, of which $14,492.39 was collected, making a collection for debt service purposes of 38.3% of the levy.

8. Respondent states that the entire twelve mill debt service levy for the year 1937 for Territory "C" was made for the benefit of one W. J. Meredith, et al., who has heretofore secured a judgment against the City of Avon Park, in Highlands County, Circuit Court, and that said judgment is not listed in the petition of the petitioner. Respondent has been informed, believes and alleges that the said W. J. Meredith is an officer in R. E. Crummer & Co., who is the fiscal agent in the proposed refunding program. Respondent alleges that said Meredith is, in said suit, acting on behalf of said Crummer.

9. Answering paragraph 10 of said petition, respondent states that he has been informed and believes and there-

fore alleges that there are other judgments against said petitioner which are not listed in said petition, and that some, at least, of said judgments are owned and controlled by the said Fiscal Agent in the proposed composition.

52 10. Respondent alleges that the said Petitioner has not in the past acted in good faith in the matter of collection of debt service taxes; that it has encouraged tax delinquency. That the petition is not filed in good faith because based upon the results of continued neglect of its creditors' rights; because it shows on its face that the proposed composition is not within the financial taxing power of Petitioner; because of a preference for certain creditors for whom levies have been made to the exclusion of others; because it omits certain judgments and judgment creditors; because the proposed plan does not clearly indicate the territory liable to be taxed to pay the refunding bonds, and because the greater part of the area liable to taxation to pay said bonds is now involved in quo warranto litigation which has been pending for more than six years, with but disultory efforts of defense.

11. That this respondent is the owner and holder of a final judgment against the said petitioner, originally filed and entered on June 1, 1936, for the sum of $63,352.68, together with costs in the sum of $17.22, which judgment is recorded in Judgment Record 3 at page 293, in the United States District Court for the Southern District of Florida, in the case entitled Lawrence W. Rittenoure, Plaintiff vs. City of Avon Park, Defendant, case No. 3371 Tampa Civil; that this judgment was later amended, nunc pro tunc, to be in the principal sum of $72,084.40, instead of $63,352.68, as will appear by the order of the Court entered in Judgment Record 3, at page 533, entered January 6, 1938, Public Records aforesaid. A true copy of the said

Judgment, together with a copy of the order
53 amending the same are attached hereto marked Exhibits "A" and "B", respectively. The said judgment has never been vacated, annulled or appealed from. It is wholly unpaid, except that the sum of $1463.35 was paid on December 24, 1937, the sum of $478.04 was paid on February 28, 1938, and the sum of $300.00 was paid on April 26, 1938, which sums have been by respondent applied as credits upon interest accruing upon the said judgment.

12. That an order for peremptory writ was entered on July 18, 1936, and peremptory writ in pursuance of said order was duly issued, and was served on August 4, 1936. A copy of the said peremptory writ is hereto attached and marked Exhibit "C".

13. That the said petitioner, City of Avon Park, did not comply with the said peremptory writ and made no return thereto, nor did it pay over any funds in its possession, as ordered in the said writ, whereupon contempt proceedings were had before this Court, resulting in an order directed to said petitioner dated the 5th day of February, 1937, directing the said City of Avon Park to show cause on February 17, 1937, why it should not comply with the mandate of the said peremptory writ, or on default thereof why it should not stand committed for contempt; that in lieu of showing cause, as directed in said order, the said petitioner, on February 15, 1937, filed a petition to extend time for compliance with said peremptory writ and in said petition represented to the Court that the City of Avon Park had at that time approximately $412,916.00 past due in default upon bonds, interest and judgment; that the highest amount in current
54 taxes the city had been able to collect since the year 1931 had been $40,655.00 on the current tax

roll and approximately $23,335.00 on delinquent rolls, of which latter amount 75% represented collections in bonds and coupons; that the city had levied a millage of four hundred mills in order to comply with the several mandates issued out of this Court to take care of the city's remaining obligations and a copy of the said ordance, which is numbered 201, was attached to the said petition; that the said ordinance was complete with the exception of the signature of the mayor, which would be immediately affixed if the Court should decline to extend the time for compliance with the mandates theretofore issued. The Court has never extended time for compliance with the said writ, nor has the levy of the said four hundred mills been made; that on the contrary this matter came on to be heard before the Court on the 18th day of December, 1937, at which time the Court ordered the petitioner to make a return to the said order to show cause within ten days from the date thereof; that on the 27th day of December, 1937, said petitioner filed a socalled return in response to said order, by which it represented that in pursuance of an agreement between the respondent herein and the said City of Avon Park, a levy of 11 1/2 mills was made in lieu of and in compliance with the said peremptory writ and that under said levy there had been collected the sum of $1463.35, up to and including the 30th day of December, 1937. Said return further stated that an audit was being made to ascertain any further amount due to this respondent under the said levy, which audit should be completed during the first week in January, 1938, and that such sum found to be due would be remitted
55 to respondent; that although repeatedly requested, Respondent has never been able to learn anything further about the said audit.

14. That after the correction of the original judgment, which took place on January 6, 1938, respondent applied

for, received and caused to be served on February 21, 1938, an amended alternative writ; that petitioner and respondent, on the 28th day of February, 1938, entered into a stipulation extending time for making return to the amended alternative writ for a period of sixty days; that at the end of the said sixty days, on the 26th day of April, 1938, upon the representation of petitioner's counsel that some provision would be made for respondent in the next succeeding tax levy, a further stipulation was entered into providing that in consideration that the petitioner should make monthly remittances of whatever sums were collected for the payment of said judgment, and the respondent would refrain from serving upon respondent an alias peremptory writ until ten days before the time called for in petitioner's charter to make the next levy of taxes for said judgment; that in pursuance of said stipulation respondent, on May 19, 1938, obtained the order of this Court directing the issuance of an alias peremptory writ, but in reliance upon said stipulation did not apply for an alias peremptory writ upon the said judgment; that respondent's first knowledge of this bankruptcy suit was obtained by means of the notice of hearing for temporary stay order, whereupon said order for alias peremptory writ was filed October 7, 1938.

15. Respondent represents that said petitioner has made no levy, so far as he is advised, to provide for the payment of said judgment, except the said levy of
56 11½ mills referred to in the return of petitioner filed December 27, 1937.

16. Respondent says that the said judgment for $72,084.40, bearing interest from June 1, 1936, constitutes a vested right specifically excepted by the terms of the Bankruptcy Act, upon which this proceeding is based; that the said vested rights of this respondent are wholly un-

affected and can in no way be impaired, postponed or delayed by reason of these bankruptcy proceedings.

HARRY L. THOMPSON,
Of Counsel for Respondent.

PHILLIPS & THOMPSON,
Attorneys for Respondent,
Clearwater, Florida.

57 EXHIBIT "A".

In the United States District Court in and for the Southern District of Florida, Tampa Division.

Lawrence W. Rittenoure, Plaintiff,
vs. No. 3371-Tampa Civil.
City of Avon Park, Florida, a municipal corporation, Defendant.

Final Judgment.

Filed: Tampa, Florida, June 1, 1936,

Now on this 1st day of June, 1936, the foregoing cause came on for hearing upon the motion of the plaintiff for final judgment in said cause, and the Court having examined the record and heard the motion aforesaid, and it appearing to the Court that summons ad respondendum was duly served upon the defendant, City of Avon Park; that the plaintiff duly filed his declaration and that judgment by default was duly and regularly entered by the Court for failure of the defendant to plead or demur to the declaration of the plaintiff as aforesaid, it is, therefore,

Considered And Ordered that the default judgment heretofore entered by this Court be and the same is hereby ratified and confirmed.

It Is Further Considered And Ordered that the plaintiff ought to have and recover from the defendant his damages sustained herein by reason of the premises, and the plaintiff having moved the Court for final judgment in said cause, as aforesaid, and having produced and filed in evidence all of the bonds, coupons and notes declared in his declaration, and it appearing therefrom that there is now due and owing to the plaintiff on the bonds, coupons and notes the principal sum of $56,680.00 evidenced by
58 said bonds, coupons and notes, together with the sum of $6672.68 interest thereon, and the Court being fully advised in the premises, it is thereupon

Considered And Ordered that the plaintiff, Lawrence W. Rittenoure, do have and recover of and from the said defendant, the City of Avon Park, a municipal corporation under the laws of the State of Florida, the sum of $56,-680.00 as principal and the sum of $6672.68 as interest, making a total sum of $63,352.68 together with his reasonable costs in this behalf expended, which are taxed by the Clerk of this Court in the sum of $17.22, for all of which let execution issue.

Done And Ordered at Tampa, Florida, this 1st day of June, A. D. 1936.

(Signed) ALEXANDER AKERMAN,
District Judge.

59 EXHIBIT "B".

In the United States District Court in and for the Southern District of Florida, Tampa Division.

Lawrence W. Rittenoure, Plaintiff,
vs. No. 3371-T. Civ.
City of Avon Park, Defendant.

Order Amending Final Judgment.

Filed: Tampa, Florida, January 6, 1938.

This matter came on to be heard before me this 5th day of January, 1938, after due notice to the defendant herein, upon the petition of the plaintiff for amendment of the final judgment herein, there being present counsel for the plaintiff and the defendant, respectively, and it appearing to the Court from the records herein that there is an error in the sum of money for which the final judgment was rendered in this case and that such error was due to a clerical mistake, and it further appearing to the Court that all of the bonds and coupons declared upon in the plaintiff's declaration were at the time of the original judgment filed as evidence in the Clerk's office and that the amount of said judgment to which the plaintiff is entitled is a mere matter of computation, and the Court being fully advised in the premises,

It Is Hereby Considered And Ordered that the said final judgment of June 1, 1936 be and the same is hereby amended nunc pro tunc, in this that said judgment be in the principal sum of $72,084.40 instead of the amount of $63,352.68. In all other respects said judgment is ratified and confirmed.

Done And Ordered at Chambers at Tampa, Florida, this 5th day of January, A. D. 1938.

(Signed) ALEXANDER AKERMAN,
District Judge.

60 EXHIBIT "C".

In the United States District Court, Southern District of Florida, Tampa Division.

United States of America, Ex Rel Lawrence W. Rittenoure, Relator,

vs. No. 3371-Tampa Civil.

City of Avon Park, a municipal corporation et al., Respondents.

Peremptory Writ of Mandamus.

It having been made to appear to this Court that the Relator is entitled to a peremptory writ of mandamus on the pleadings in this cause and the Court having, by its judgment dated on the 18th day of July, 1936, directed the issuance of said peremptory writ of mandamus;

Now, Therefore, you are hereby commanded and strictly enjoined that you do

(a) Forthwith pay over to relator all funds, which are lawfully applicable, in the possession or under the control of the said City of Avon Park, or a sufficient amount thereof to satisfy the aforesaid judgment, interest thereon and costs and particularly to pay over to Relator all sums found to be in the sinking fund of said City of Avon Park, up to the amount of Relator's judgment aforesaid and to perform all necessary official duties pertaining thereto.

(b) Forthwith to assess and levy a tax sufficient to pay said judgment and interest thereon and costs of this action and to diligently collect the same and take all lawful steps for the enforcement thereof at the earliest date permitted by law, and to remit monthly the sums so collected
61 to the Clerk of this Court for payment to said Relator, until said judgment and the interest thereon and costs of this action are fully paid and satisfied and to make return at each Rule Day as to your activities hereunder until this writ shall be fully obeyed.

(c) That if said payments aforesaid shall not have amounted to a sufficient sum to satisfy the judgment aforesaid, with interest thereon and the costs of this action at the time the respondents aforesaid are required to make up the budget of the City of Avon Park for the next ensuing year, that thereupon you are required to levy a tax sufficient to pay any balance of said judgment and the interest thereon and the costs of this action, making due allowance for such taxes as are probably not collectible within a reasonable time, and to diligently collect the same and take all lawful steps for the enforcement thereof at the earliest time permitted by law, and that you thereupon are required to remit monthly the sums so collected to the Clerk of this Court for payment to said Relator, until said judgment and interest thereon and costs of this suit are fully paid and satisfied.

Witness the Honorable Charles Evans Hughes, Chief Justice of the United States District Court, Hon. John W. Holland, a Judge of the District Court of the United States, for the Southern District of Florida, and the seal of said Court, the 18th day of July, 1936.

By order of Court.

EDWIN R. WILLIAMS,
Clerk of the U. S. District Court.
By J. A. LAW.

62 Answer to the petition of the City of Avon Park, of William E. Sweet and American United Life Insurance Company was filed October 26, 1938, said answer being as follows:

63 ANSWER.

Filed Oct. 26, 1938, Tampa, Fla.

Filed Winter Haven, Fla., Oct. 28, 1938, Allen E. Walker.

(Title Omitted.)

Comes now William E. Sweet, a citizen of Denver, Colorado, and American United Life Insurance Company, a corporation organized and existing under the laws of Indiana, and for answer to the petition herein filed by said City say that they are without knowledge as to matters and things set forth and alleged in said petition, except as to the terms of the proposed composition, copies of which have been furnished to the undersigned creditors, and for a defense and objection to the composition or refunding and to granting the prayer of the petition, defendants say:

I.

That the so-called Refunding Plan submitted to your petitioners is not a composition in bankruptcy and is unfair, inequitable and discriminates unfairly in favor of some creditors or class of creditors and against others, in that

64 (a) One of the conditions of the plan is that all creditors, both judgment holders and bondholders, are required to deliver to R. E. Crummer & Company, so-called fiscal agents of the city, all past

due interest on outstanding bonds and judgments entered upon bonds and coupons and accept in payment thereof from said R. E. Crummer & Company interest upon said bonds from the date of default at the rate of 2% per annum, and are compelled to deliver said coupons to said R. E. Crummer & Company, who, under the plan, will sell said coupons or refunding bonds issued to it in lieu of said coupons, to taxpayers of the City of Avon Park for use by said taxpayers at par in payment of delinquent taxes for the year 1936 and prior years, and in payment of special assessment liens for a period of 24 months from the date of exchange. Said Crummer & Company then will sell the coupons or refunding bonds as above alleged for not exceeding 50% of par for the first six months, 60% for the next six months, 70% for the next six months, and 75% for the next six months. These creditors say that a plan of composition cannot involve a provision which compels these creditors and other creditors to sell their claims to third parties at a discount to enable third parties to realize a profit thereon, particularly where the third party is the agent of the bankrupt.

(b) The said R. E. Crummer & Company, according to the information furnished to the undersigned creditors, is alleged to be the fiscal agent of said city, employed by it for the purpose of procuring composition of its outstanding municipal indebtedness. But, the
65 said city, instead of paying said R. E. Crummer & Company for said services, propose in its petition and plan of composition to compel these creditors and other bondholders to pay said agents $20.00 per bond and to deliver to said agents coupons as above set forth, at 33-1/3% of the face value so as to enable said fiscal agent to speculate upon them, the profit to accrue as a result of the resale of said coupons to the taxpayers.

(c) The plan proposed in the petition is not a composition in that it does not propose to settle the indebtedness represented by coupons upon the same basis as the indebtedness represented by bonds, although both bonds and coupons are parts of the same instrument. Though evidenced by separate documents, they are obligations of the same class and must receive the same terms. The petition seeks to discriminate against the holders of coupons by requiring them to accept 33-1/3% of their face value, at the same time agreeing to deliver to bondholders new obligations of the city equaling the face of the old.

(d) The plan does not specify the zones or portions of the city as now constituted or as formerly constituted, which will be liable for taxes for the payment of the respective issues of bonds. According to circular letter of the city dated October 12, 1938, the bonds cannot be issued until after the Court has determined these questions, and petition does not show that the city can deposit the refunding bonds in Court as required by law, nor can these creditors determine whether to accept said refunding bonds until the questions of law involved have been definitely settled and their legal rights determined.

66 (e) The plan is conditioned upon the fact that bonds and coupons upon which judgments have been obtained shall be refunded upon the same basis as if such judgments had not been obtained, without regard to whether or not writs of mandamus have been issued against the said city that have become peremptory.

(f) That the plan proposes to cancel the liability of the city to the holders of judgments for interest included in said judgments upon past due coupons, for interest upon the judgments, thereby in effect proposing to set

aside judgments which have been obtained at great expense to the creditors without compensating them for such expense, and at the same time requiring them to surrender or cancel the rights required thereunder.

(g) For the reason that the City of Avon Park, with the apparent co-operation and approval of its fiscal agent, does not come into this Court with clean hands. It has ignored for years the commands of the writs of mandamus issued against it on behalf of these creditors and others, and has consistently sought to encourage its taxpayers to refuse to pay taxes in order to enable it to compel its creditors to accept a settlement of its debts at a smaller price.

II.

Further answering said petition and for partial defense thereto, these creditors say:

(a) That they are the owners and holders of certain judgments obtained in this Court against the City of Avon Park herein described as follows:

Wm. E. Sweet—Final Judgment dated December 16, 1935.	$ 9,952.80
American United Life Insurance Company—Judgment for dated October 1, 1935.	13,942.50

67 and these creditors, subsequent to the procurement of said judgments, applied for and obtained from this Court alternative writs of mandamus and subsequent peremptory writs of mandamus requiring the City of Avon Park to levy taxes upon all the property located within said city as of the date of the bonds upon which the judgments were obtained, to pay said judg-

ments. The peremptory writs were issued on January 22, 1937, in both cases and the time for appeal from said peremptory writs has long since expired. These creditors therefore allege that they are the owners and holders of rights under said judgments and said writs of mandamus which have long since become vested and which accrued by reason of the facts above stated. They cannot be deprived of these rights under the statute of Congress by this proceeding and these creditors further say that any attempt on the part of this Court to deprive these creditors of their rights so vested under their judgments and writs would be to deprive them of their property in violation of the Fifth Amendment to the Constitution of the United States.

(b) These creditors further say that the refunding plan proposed is not a plan of composition and if so, it is unfair and inequitable and discriminates unfairly against these creditors for the reason that W. J. Meredith, and others, obtained a peremptory writ of mandamus against the city and these creditors say that said judgment is owned or was obtained on behalf
68 of the Refunding Agent and the relators have no real interest in the same. Recently the city applied for an order to restrain these creditors and others from enforcing the same but did not seek to restrain the judgment and writ held by the Refunding Agent. These creditors say that it is unfair, inequitable and discriminatory for the fiscal agent of this town to own, to hold or to deal in for profit the obligations of the City of Avon Park, whether represented by judgment or by bonds and coupons, without full disclosure of all facts in connection therewith, including the prices paid for the same and the method of settlement of the same, and the profits which would accrue by reason thereof, especially as said fiscal agent is attempting to deal for

both parties and under the refunding plan is requiring the creditors to pay its compensation of $20.00 per bond.

(c) It is apparent from the entire plan that the fiscal agent is engaged in this work as an independent contractor and not as agent of the City of Avon Park. It is represented both bondholders and the city and at the same time it has since contracted with the city engaged in buying obligations of the city for its own profit, and said petition does not make full disclosure of all facts and circumstances. It is unfair and inequitable to permit the so-called fiscal agent of the city to profit by such transactions while agent of the city or to fix the terms for settlement of the bonds and judgments owned by these creditors where at the same time it conceals from these creditors the terms of settlement with itself.

69 III.

The said plan is unfair and inequitable as against the undersigned creditors both as to their judgments and bonds for the reason that the said fiscal agent while owner of a certain judgment against said city, the amount of which is unknown to these creditors, upon which a peremptory writ of mandamus was issued, by writ of mandamus against the City of Avon Park induced the city to levy a tax for the payment of said judgment which constituted a gross discrimination against these creditors as holders of judgment against said city. These creditors are informed and believe that said fiscal agent has already been paid on account of said judgment an amount which is unknown out of the proceeds of such levy. There is further discrimination provided in the plan which will permit the compromise of taxes levied for taxes levied in 1936 and previous years but requiring payment of the 1937 taxes in legal tender, notwithstanding the fact that the City of Avon Park has consistently

and persistently refused to levy the taxes commanded by the peremptory writs of mandamus issued by this Court in favor of these creditors.

GILES J. PATTERSON,
Attorney for William E. Sweet
and American United Life
Insurance Company.

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70 On October 31, 1938, the Master filed his report of claims. Copy thereof is omitted.

On October 31, 1938, the City filed a motion to extend the power of the Master. Copy of said motion is omitted.

On October 31, 1938, the Court entered its Order filed same date extending powers of Master. Copy of order is omitted.

On Nov. 17, 1938, Roger W. Babson filed a motion to amend his petition to vacate the stay order. Copy thereof is omitted.

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71 On November 21, 1938, Amended Answer of William E. Sweet and American United Life Insurance Company was filed; copy of said answer being as follows:

72 AMENDED ANSWER.

(Title Omitted.)

Filed Winter Haven, Fla., Nov. 22, 1938, Allen E. Walker.

Comes now William E. Sweet and the American United Life Insurance Company, a corporation, and by leave of the Court first had and obtained, amend their answer in the entitled cause as follows:

I.

By adding to paragraph I of the original answer the following paragraphs:

(h) That by Section 3 of said plan, the Refunding Bonds are to be dated July 1, 1937, bearing interest from the date thereof, but the debtor has failed to set forth in its petition that it has funds available for the payment of interest accrued on said refunding bonds if
73 they were issued, and said petition fails to allege that the petitioner has made any provision for a sinking fund for the payment of interest, or that it has collected any funds for the payment of the same.

(i) The plan of refunding as set forth in said petition makes no provision for the payment of $25,000.00 in outstanding notes of said debtor bearing interest at 8% and dated December 1, 1927, which said notes matured December 1, 1929. These notes constitute the debt upon which the judgment of Lawrence W. Rittenoure is based, and these creditors allege that the plan of composition is not fair, equitable or reasonable in that it attempts to force your creditors to accept refunding bonds at a reduced rate for as much of their judgments as is based upon bonds, and to sell their coupons to the Fiscal Agent

at one-third of the face value thereof without at the same time requiring judgments based upon notes of the issue of December 1, 1927, to accept refunding bonds or surrender interest at one-third of the face value thereof.

(j) The city has not listed, contrary to what is averred in its petition, all its known creditors involved in suits against it, and it has omitted certain judgment creditors, and by reason of said omission petitioner has secured a stay order or an injunction against only those creditors specifically named, but not against those which have not been named who are thus favored. These creditors further show that one W. J. Meredith, in Suit #4100 in the Circuit Court of Highlands County, Florida,
74 brought his petition for mandamus on $6,000.00 par value of bonds and $34,800.00 par value of coupons and secured peremptory writ requiring the petitioner to revise the budget for the fiscal years 1937 and 1938 to include provision for payment of said bonds and coupons and that it was in pursuance of this mandate that the 12½ mill levy was made. These creditors allege that the Fiscal Agent herein is the real party in interest in said suit and that, as stated, no stay order or injunction was obtained against the prosecution of said suit or the execution of the mandate therein contained. These creditors further allege that the following judgments listed on the 11th page of said petition have been assigned; that the judgment in favor of Gulf Life Insurance Company awarded October 20, 1933, has been assigned to R. E. Crummer & Company; that the judgment in favor of Prettyman as Trustee for Southern Title and Trust Company has been assigned to Brown-Crummer Investment Company; that both of the judgments in favor of the First National Bank of Gainesville have been assigned to the Brown-Crummer Investment Company; that there is a judgment in favor of Selig Company and another in favor of Eureka Fire Hose Manufacturing

Company, neither of which is listed in said petition. These creditors further state that the judgment mentioned in said petition in favor of the Women's Benefit Association, No. 3351 T. Civil, for $22,090.00, has been assigned to Brown-Crummer Investment Company. These creditors are without knowledge of the present ownership of the remaining judgments referred to in said petition.

GILES J. PATTERSON,
Attorney for William E. Sweet and American United Life Insurance Company.

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75 On November 21, 1938, William E. Sweet and American United Life Insurance Company filed a motion to amend their answer. Copy thereof is omitted.

On Nov. 21, 1938, Lawrence W. Rittenoure filed a motion to amend his answer. Copy thereof is omitted.

On November 21, 1938, Amendment to Answer of Respondent Creditor, Lawrence W. Rittenoure, was filed, copy of said amendment to Answer being as follows:

76 AMENDMENT TO ANSWER OF RESPONDENT CREDITOR, LAWRENCE W. RITTENOURE.

(Title Omitted.)

The respondent, Lawrence W. Rittenoure, by his counsel undersigned, and with leave of Court, without waiving

his motion to dismiss, amends his answer to the petition of Avon Park, Florida, by adding paragraphs to said answer immediately following paragraph 10, as follows:

"10A. That the so-called refunding plan submitted by said petitioner is not a composition in bankruptcy and is unfair, inequitable and discriminates unfairly in favor of some creditors and in favor of certain classes of creditors and against others, in that

(a) Section 10, paragraph (A) provides that R. E. Crummer & Company, so-called fiscal agent of the city, is granted "exclusive authority to act for and on behalf of second party (Avon Park) in all matters connected with or relating to the exchange of the presently outstanding securities for refunding bonds"; and by paragraph (C), read in connection with Section 4
77 and other portions of said contract, both judgment holders and bondholders are required to deliver to R. E. Crummer & Company, all past due interest on outstanding bonds and judgments entered upon bonds and coupons and accept in payment thereof from said R. E. Crummer & Company, the interest upon said bonds from the date of default at the rate of 2% per annum, and are compelled to deliver said coupons to said R. E. Crummer & Company who, under the plan, will sell said coupons or refunding bonds issued to it in lieu of said coupons, to taxpayers of the City of Avon Park for use by said taxpayers, at par in payment of delinquent taxes for the year 1936 and prior years, and in payment of special assessment liens; and that this special privilege is conferred for a period of twenty-four months *from the date of the said contract.* The said contract is dated the 17th day of July, 1937. Said R. E. Crummer & Company then will sell the coupons or refunding bonds as above alleged for not exceeding 50% of

par for the first six months, 60% for the next six months, 70% for the next succeeding six months and 75% for the next succeeding six months.

In a certain printed communication bearing date the 23rd day of April, 1938, entitled "Refunding Plan of the City of Avon Park", ostensibly published by the City of Avon Park, Florida, in Section 9 thereof, it is stated:

"Section 9. Provision is made that all taxes levied by the City for the year 1937, and subsequently, will be payable in legal tender only, but the City of
78 Avon Park and R. E. Crummer & Company have agreed to co-operate in developing a reasonable course of procedure for the adjustment and collection of the reasonable maximum equity of delinquent taxes for the years 1936 and prior, and special assessment liens, it being specifically agreed that for a period of twenty-four months after date of the first exchange of the said refunding bonds a par value of refunding bonds equivalent to the par value of refunding bonds issued for the purpose of refunding accrued interest, will be kept available by R. E. Crummer & Company and held subject to the order of the City of Avon Park for use in paying taxes assessed by the City of Avon Park for the year 1936 or prior, or for the purpose of discharging any special assessment liens, and interest thereon, now outstanding and unpaid, said bonds to be delivered by R. E. Crummer & Company upon the order of the City of Avon Park at not exceeding 50% of the face amount thereof for the first six months; at not exceeding 60% for the next succeeding six months; at not exceeding 70% for the next succeeding six months; and at not exceeding 75% for the next succeeding six months."

This respondent avers that creditors are now being solicited to sign their consent to the refunding agreement

upon the representations contained in the said "Refunding Plan", which varies substantially, as shown, and in other respects from the allegations of the petition presented to this Court, containing as it does a purported
79 copy of the original contract between the so-called fiscal agents and the city. Whether the proposed refunding plan be as represented in the said communication of April 23, 1938, or as in the contract according to exhibit attached to the petitioner's petition, the respondent says that a plan of composition such as is proposed, cannot equitably, involve a provision which compels him, with other creditors, to sell claims to third parties at a discount, to enable third parties, such as the so-called fiscal agent herein, to realize a very substantial profit thereon, particularly where the third party is the agent of the bankrupt and substantial creditor, as shown in the petition; that this provision of the Plan enables the so-called Fiscal Agent to purchase the coupons at 33-1/3% of par, thus costing the Fiscal Agent about $120,200.00 for the $360,590.00 of past due interest; that said Fiscal Agent is empowered to sell said coupons to delinquent taxpayers at an average price of 63-3/4%, thus empowering the said Fiscal Agent to make a profit of approximately $110,000.00 at the expense of the taxpayers; that a low price to taxpayers would encourage tax redemptions, thus clearing lands of delinquent taxes and restoring them to the tax roll, to the benefit of both taxpayers and creditors in general; that the arbitrary power to the fiscal agent given by this plan to fix prices, will result in fewer redemptions by reason of the higher price and result in a detriment to all creditors except the Fiscal Agent; further, that the said Fiscal Agent will reap the benefit of the interest accruing on these bonds while held by it, pending their purchase by delinquent taxpayers.

80 (b) The said R. E. Crummer & Company, by Section 10, paragraph (A) of said contract aforesaid, is made the fiscal agent of said city and by said contract has been employed by the city to endeavor to accomplish a refunding and effect a composition of its outstanding municipal indebtedness. That by the said contract, in Section 9 thereof, it is expressly provided that the said fiscal agent shall be reimbursed and compensated for expenses incurred and services rendered, by assessing charges against security holders who accept refunding bonds under the terms of the contract made between said fiscal agent and this petitioner city. That by the said prospectus of the 23rd day of April, 1938, notice is given that a charge has been set at $20.00 per thousand dollar bond tendered for exchange and the payment of said sum respondent avers, together with consent to all of the other conditions and provisions of the said contract, is a condition to participation by creditors in the proposed composition. That, by said contract, this charge is one wholly within the power of the so-called fiscal agent to fix; that by means thereof the said agent may vary said charge among the several creditors according to its own whims without the direction or control of this Court; that the said plan does not contemplate the order of this Court setting this arbitrary fee but leaves it wholly a private matter between the individual creditors, severally, and the said agent, wherefore this respondent says that the Plan is not a fair and equitable proposition for composition because allowing special preferences to favored creditors and discriminations against those not favored.

81 (c) The plan proposed in the petition is not a composition, in that it does not propose to settle the indebtedness represented by coupons upon the same basis as the indebtedness represented by bonds, although both bonds and coupons are parts of the same instrument.

Though evidenced by separate documents they are obligations of the same class and should receive the same terms. The petition seeks to discriminate against the holders of coupons by requiring them to accept one-third of their value, while at the same time agreeing to deliver to bondholders obligations of the City equal to the face value of the old bonds.

(d) The plan does not specify the zones or portions of the city as now constituted or formerly constituted, which will be liable for taxes for the payment of the respective issues of refunding bonds. According to circular letter of the city, dated October 12, 1938, the bonds cannot be issued until the Court has determined these questions, and until the Supreme Court of Florida has finally determined the matters now being litigated in the quo warranto suit heretofore referred to in paragraph 4 of this respondent's original answer. The petition does not show that the city can deposit the refunding bonds as required by law, nor can creditors determine whether they should accept said refunding bonds until questions of law regarding the description and extent of property
82 available for taxing purposes has been definitely settled and all legal rights pertaining thereto finally determined.

(e) The plan is conditioned upon the fact that bonds and coupons upon which judgments have been obtained shall be refunded upon the same basis as if such judgments had not been obtained, without regard to whether or not writs of mandamus have been issued against said city which have become peremptory.

(f) The plan proposes to cancel the city's liability for interest upon the judgments rendered for interest upon past due coupons, thereby in effect proposing to set aside, without compensation, judgments which have

been obtained at great expense, and at the same time requiring judgment creditors to surrender or cancel the rights acquired thereunder.

(g) The City of Avon Park, with the apparent co-operation and approval of its fiscal agent, does not come into this Court with clean hands, in that for years it has ignored the commands of the writs of mandamus issued against it and on behalf of respondent and other creditors, and has consistently sought to encourage the taxpayers to refuse to pay taxes in order to enable it to compel its creditors to accept a settlement of its debts at a smaller price.

(h) That by Section 3 of said Plan the refunding bonds are to be dated July 1st, 1937; that they bear interest from the date thereof, and that said petitioner is therefore now in default on said new bonds; that petitioner has made no provision for sinking fund to pay said interest, nor has it collected any funds for
83 the payment of said interest.

(i) That the said Plan makes no provision for the payment of the $25,000.00 8% notes dated December 1, 1927 and due December 1st, 1929, which constitutes the debt upon which a large portion of this Respondent's judgment is based, for which reason, respondent alleges this proposed composition is not equitable, fair or reasonable.

(j) That said Plan, by Section 8 thereof, contemplates that the Fiscal Agent, not Petitioner, shall be the employer and paymaster of the City's attorney in this matter; that in this matter the City Attorney's interest will, to some extent, be colored by his paymaster's interest, and not that of the Petitioner and its taxpayers; that the best interests of the City will not, therefore, be

independently represented by counsel in this case, with the result that the special interests of the Fiscal Agent, rather than that of creditors and taxpayers will be represented. And this Respondent asserts that for this reason the proposed Plan is not fair and equitable.

(k) The City has not listed, contrary to what is averred in its petition, all of its known creditors involved in suits against it and it has omitted certain judgment creditors and by reason of said omission petitioner has secured a stay order or injunction against those creditors specifically named, but not against those which have not been named who are thus favored.

Respondent amends paragraph 8 and 9 of his original answer to show that the said W. J. Meredith, in Chancery suit No. 4100 in the Circuit Court of Highlands County, Florida, brought his petition for mandamus on
84 $6,000.00 par value of bonds and $34,800.00 par value of coupons and secured peremptory writ requiring the petitioner to revise the budget for the fiscal years 1937 and 1938 to include provision for payment of said bonds and coupons and that it was in pursuance of this mandate that the 12½ mill levy was made. Respondent alleges that the Fiscal Agent herein is the real party in interest in said suit and that, as stated, no stay order or injunction was obtained against the prosecution of said suit or the execution of the mandate therein contained. Respondent further alleges that the following judgments listed on the 11th page of said petition have been assigned; that the judgment in favor of Gulf Life Insurance Company awarded October 20, 1933, has been assigned to R. E. Crummer & Company; that the judgment in favor of Prettyman as Trustee for Southern Title and Trust Company has been assigned to Brown-Crummer Investment Company; that both of the judgments in favor of the First National Bank of Gainesville have

been assigned to the Brown-Crummer Investment Company; tha. there is a judgment in favor of Selig Company and another in favor of Eureka Fire Hose Manufacturing Company, neither of which is listed in said petition. Respondent further states that the judgment mentioned in said petition in favor of the Women's Benefit Association, No. 3351 T. Civil, for $29,090.00, has been assigned to Brown-Crummer Investment Company. Respondent is without knowledge of the present ownership of the remaining judgments referred to in said petition.

85 10B. For amendment to paragraph numbered 6 of this respondent's original answer, respondent attaches hereto, marked Exhibit ...., and makes a part hereof, a sketch which respondent represents will show the various tracts of land referred to as Tracts A, B and C, respectively.

EDGAR JOHN PHILLIPS,
HARVEY L. THOMPSON,
Attorneys for Lawrence W. Rittenoure.

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86 On November 21, 1938, the Court entered an order granting leave to William E. Sweet and American United Life Insurance Company to file amended answer; copy thereof is omitted.

On Nov. 21, 1938, the Court entered an order granting leave to Lawrence W. Rittenoure to file amended answer. Copy thereof is omitted.

On Nov. 28, 1938, the City of Avon Park filed a petition to include other proceedings in the stay order. Copy thereof is omitted.

On Nov. 30, 1938, the City of Avon Park filed a motion for extension of time. Copy thereof is omitted.

On Nov. 28, 1938, the Court entered its order granting the petition of the City of Avon Park. Copy thereof is omitted.

On Nov. 30, 1938, the Court entered its order granting the motion of the City of Avon Park. Copy thereof is omitted.

On Jan. 3, 1939, the Master filed a supplemental report. Copy thereof is omitted.

On Dec. 29, 1938, the Court entered an order extending time for creditors to file claims. Copy thereof is omitted.

On Feb. 3, 1939, the City of Avon Park filed Motion for Extension of Time. Copy thereof is omitted.

On Feb. 3, 1939, the Court entered an order extending time within which the city could file a modified plan. Copy thereof is omitted.

On March 3, 1939, affidavit of mailing of notices was filed before Master. Copy thereof is omitted.

On March 18, 1939, William E. Sweet and American United Life Insurance Company filed a motion. Copy thereof is omitted.

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87 On February 28, 1939, Petition submitting modifications in Plan of Composition was filed, together with exhibits; a copy of petition and exhibits being as follows:

PETITION SUBMITTING MODIFICATIONS IN PLAN OF COMPOSITION.

D. Filed Feb. 28, 1939, Tampa, Fla.

Filed Winter Haven, Fla., Mar. 22, 1939.

88 (Title Omitted.)

Comes now City of Avon Park, Florida, Petitioner herein, by its undersigned attorneys, and respectfully submits to the above entitled Court certain changes and modifications in the refunding plan heretofore submitted in these

proceedings, dated April 23rd, 1938, and attached to the original petition herein as Exhibit "A", which changes and modifications are embraced within and adopted by the resolution of the City Council of the City of Avon Park, certified copy of which is hereto attached, marked Exhibit 1, and incorporated herein by reference.

That said Exhibit 1 is a certified copy of the resolution of the governing authority of the City of Avon Park, Florida, and constitutes the acceptance in writing of the changes and modifications in said plan of refunding.

Wherefore, Petitioner respectfully petitions the above entitled Court for its order permitting the filing of said changes and modifications adjudging that the plan
89 of refunding or composition now involved in these proceedings is the plan of April 23rd, 1938, as so changed or modified; and adjudging that in the opinion of the Court the said changes and modifications are not materially adverse to the interest of any creditor affected by said plan, and that therefore, no notice is necessary.

Respectfully submitted this 28th day of February, A. D. 1939.

HENRY L. JOLLEY,
T. A. McNICHOLAS,
Attorneys for Petitioner.

EXHIBIT 1.

90 Resolution.

Mr. A. McKee Elwell introduced the following resolution and moved its adoption, to-wit:

Whereas, under date of April 23rd, 1938, a refunding plan for the City of Avon Park, Florida was promulgated and made the basis for the institution of proceedings

under Chapter IX of the Bankruptcy Act of the United States, as amended, commonly known as the "Municipal Debt Readjustment Act"; and

Whereas, such proceedings were heretofore authorized by the City of Avon Park, and instituted in the District Court of the United States for the Southern District of Florida, being styled "In the Matter of City of Avon Park, Florida, Debtor, Tampa Division, No. 3088-T-Bankruptcy"; and

Whereas, pursuant to order entered upon the filing of the petition in said proceedings, and under date of August 15th, 1938, notice was duly and regularly given to creditors in accordance with said order of August 15th, 1938, and certain objections have been filed in said cause to the original plan of refunding; and

Whereas, City of Avon Park, as Petitioner in said proceedings, desires to make certain changes or modifications in the said plan of refunding, or plan of composition, in order to obviate many of said objections;

Now Therefore, Be It Resolved, that the plan of refunding of the City of Avon Park, dated April 23rd, 1938, be and the same is hereby changed and modified in accord with the changes and modifications contained in Exhibit "A" attached to this resolution, styled "Plan of Composition of the City of Avon Park, Florida, as Modified", which exhibit is hereby incorporated into this resolution and made a part hereof; and

91 Be It Further Resolved that the attorneys for Petitioner in said cause shall immediately file therein a petition submitting said changes and modifications, attaching thereto a certified copy of this resolution, including said exhibit, which shall constitute the

acceptance in writing by the Petitioner of the plan, as so changed or modified.

The above resolution was seconded by Mr. Will Bennett and upon being put to a vote, was adopted as follows:

Ayes	Nayes
E. W. Hartt	.....
A. McKee Elwell	.....
L. D. McGibboney	.....
R. F. Sappington	.....
Will Bennett	.....

State of Florida,
County of Highlands, ss.

I, R. D. Reddick, do hereby certify that I am the duly qualified and acting City Clerk of the City of Avon Park, Florida, and as such, I am the custodian of all the official records of said City, and that the foregoing resolution, together with Exhibit "A" attached thereto, is a true and correct copy of said resolution adopted at the adjourned meeting of the City Council of said City held in the City Hall at Avon Park, Florida on the 23rd day of February, A. D. 1939, as the same appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said City this 23rd day of February, A. D. 1939.

(Sgd.) R. D. REDDICK,
City Clerk, City of Avon Park.

(Seal of City of Avon Park.)

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EXHIBIT "A".

Plan of Composition of the City of Avon Park, Florida, as Modified.

Section 1. Indebtedness of the City of Avon Park proposed to be affected by the provisions of this Refunding Plan comprises (a) all outstanding principal bonded indebtedness; (b) all accrued interest on the bonds proposed to be refunded hereunder to the date of the proposed Refunding Bonds, whether evidenced by matured interest coupons, or otherwise; and (c) bonds and coupons upon which judgments have been obtained against the City of Avon Park, which items are proposed to be refundable as if such judgments had not been obtained. The said indebtedness proposed to be affected hereby is more particularly described as follows:

Date of Issue	Name of Bond Issue	Int. Rate	Principal Amount Outstanding as of 7-1-37 Matured	Unmatured	Total Interest to 7-1-37
6/1/16	Street Bonds	5%	$ None	$28,000.	$9,441.76
11/1/20	Street Bonds	6%	None	16,500.	6,255.00
5/1/22	Street Bonds	6%	None	47,000.	18,560.00
5/1/22	Refunding Bonds	6%	None	10,000.	4,150.00
5/1/22	Park Improvement Bonds	6%	None	5,000.	2,300.00
1/1/24	Street Improvement Bonds	6%	22,000.	None	9,330.00
1/1/25	Street Improvement Bonds	6%	6,000.	None	2,760.00
5/1/25	Improvement Bonds, Issue of 1925	6%	30,000.	158,000.	60,910.00
5/1/25	Refunding Bonds, Issue of 1925	6%	11,000.	27,000.	29,360.00
	(Bonds and interest accruals of the above described 6% issues are proposed to be refunded by Series A Refunding Bonds; and the 5% Street Bonds of 1916 are to be exchanged for Series AA Refunding Bonds).				
12/1/25	Street Improvement Bonds	6%	58,000.	None	24,530.00
10/1/26	General Improvement Bonds	6%	None	323,000.	137,205.00
5/1/27	Street Improvement Bonds	6%	36,000.	None	15,230.00
1/1/29	Refunding Bonds	6%	20,000.	68,000.	38,220.00
	(Bonds and interest accruals of the four issues next above described are proposed to be refunded by Series B Refunding Bonds.)				
			$183,000.	$682,500.	$358,251.76

Total Bonds	$865,500.00
Total Interest	358,251.76
Total Bonds and Interest	$1,223,751.76

93 Section 2. There have been legally authorized and the City of Avon Park proposes to issue general obligation Refunding Bonds of the City containing a pledge of the full faith and credit of the City of Avon Park, said bonds to be in an aggregate principal amount equal to the principal amount of the City of Avon Park bonds outstanding as of July 1, 1937. Refunding Bonds will be deposited in escrow with The First National Bank of Chicago, in the City of Chicago, Illinois, and those prepared for exchange for the outstanding principal indebtedness shall be delivered to the holders of the securities to be refunded in exchange therefor on the basis of par for par. Refunding Bonds to be issued in lieu of and in exchange for the accrued interest liability being refunded shall be issued in accordance with modified Section 9 hereof.

Section 3. Refunding Bonds proposed to be issued will be dated July 1, 1937, mature July 1, 1967, and bear interest, payable semi-annually, at the following rates:

Two per cent. (2%) per annum for a period of two (2) years from the date thereof;

Three per cent. (3%) per annum for the next succeeding six (6) years;

Four per cent. (4%) per annum for the next succeeding seven (7) years;

Five per cent. (5%) per annum thereafter.

Section 4. The Refunding Bonds shall be callable at par upon any interest payment date prior to maturity. If the option to call the Refunding Bonds prior to
94 maturity is used, it shall be exercised in the following manner:

"The Refunding Bonds shall be drawn by lot from all of the then outstanding Refunding Bonds. Notice of redemption, specifying the Refunding Bonds called, shall be filed at the place where the principal and interest of said Refunding Bonds are payable at least thirty (30) days prior to such redemption date. Notice of intention to redeem said Refunding Bonds shall be published once, not more than sixty (60) days, nor less than thirty (30) days prior to the redemption date, in at least two (2) publications, one of which shall be a newspaper having general circulation in Avon Park, Highlands County, Florida, and the other shall be a financial journal published in the City of New York, State of New York."

Section 5. In view of the fact that the City of Avon Park had boundary changes twice during the time it was issuing bonds and in view of the fact that Refunding Bonds can only be issued as continuations and extensions of original obligations, it has been necessary to provide for the issuance of the proposed Refunding Bonds in two major series, namely, "A" and "AA" in one group and "B" in the other group. The original bonds proposed to be refunded by the respective series of Refunding Bonds are indicated in Section 1 hereof.

The above facts have necessitated the creation of separate interest and sinking fund tax levies for the two major series, and, in order that the full scope of these two separate provisions may be known, the applicable sections of the resolution adopted by the City Council of the City of Avon Park authorizing the issuance of the proposed Refunding Bonds are quoted in full as follows:

"That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of the said Series "A" and Series "AA"

Refunding Bonds herein authorized to be issued, the said City hereby covenants and agrees with the holders of said Refunding Bonds that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1937 and 1938, there shall be included a levy of a current ad valorem tax on all property within the original area of said City, as defined by Chapter 6,662, Laws of Florida, Acts of 1931, subject to the levy and collection of such tax, sufficient to produce annually the sum of Ten Thousand Dollars ($10,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be

"available and which shall be actually applied
95 to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1939 to 1944, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Fifteen Thousand Dollars ($15,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1945 to 1951, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Twenty Thousand Dollars ($20,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that beginning with the annual budget and tax levy to be made in the year

1952 and continuing each year thereafter until all of said Refunding Bonds, Series "A" and Series "AA", and the interest thereon, have been retired, the annual interest and sinking fund current ad valorem tax levy shall be sufficient to produce not less than $30,000.00, including and deducting therefrom any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose.

"That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of the said Series "B" Refunding Bonds herein authorized to be issued, the said City hereby covenants and agrees with the holders of said Refunding Bonds that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1937 and 1938, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the area of said City as defined by Chapter 10,320, Laws of Florida, Special Acts of 1925, and Chapter 12,514, Laws of Florida, Special Acts of 1927, subject to the levy and collection of such tax, sufficient to produce the annual amount of Thirty Thousand Dollars ($30,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose; that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1939 to 1944, both years inclusive, there shall be included a levy of a current ad valorem tax on all property within the said territorial limits of said City as hereinabove in this paragraph identified, subject to the levy and collection of such tax, sufficient to produce annually the sum of Twenty-five Thousand Dollars ($25,000.00), including and deducting therefrom, at the option of said City, any revenue other than from ad valorem taxes which

96 may be available and which shall be actually applied to such purpose; that beginning with the annual budget and tax levy to be made in the year 1945 and continuing each year thereafter until all of said Refunding Bonds, Series "B", and the interest thereon, have been retired, the annual interest and sinking fund ad valorem tax levy shall be sufficient to produce not less than Twenty Thousand Dollars ($20,000.00), including and deducting therefrom any revenue other than from ad valorem taxes which may be available and which shall be actually applied to such purpose.

"All such taxes shall be levied and computed upon the extended and finally equalized valuation of all property within said City as constituted at the time of the issuance of the respective issues of bonds refunded thereby, except only such property as was exempt from taxation under the laws and Constitution of Florida which were in force and effect at the time of the creation of the indebtedness proposed to be refunded hereunder. The taxes so levied shall be in addition to all other taxes levied by or on behalf of said City, and the proceeds thereof are hereby appropriated and shall be used exclusively for the purpose for which the same are levied, and so long as any of said Refunding Bonds are outstanding, the respective annual tax levies shall be increased when necessary to provide sufficient funds for the actual interest and principal or sinking fund requirements of the year next succeeding that in which the budget is being made and prepared."

A provision is also included that, in case of failure or refusal of the City of Avon Park to perform any agreements or obligations to the holders of the said Refunding Bonds, or upon default in the payment of interest, the said City of Avon Park shall be accorded a period of six

(6) months within which to correct the same, and, upon its inability or refusal to do so within that period and upon the declaration in writing filed with said City of Avon Park by the holders of at least twenty-five per cent. (25%) in principal amount of the Refunding Bonds then outstanding, all of said bonds shall, at the option of the respective holders, revert to the original interest rate of the securities exchanged therefor, such reversion being effective from the date to which interest had been paid on the Refunding Bonds prior to the date of filing of the declaration of intention to exercise such option.

97 Section 6. Provision is made that, each six months after interest then due has been paid on said Refunding Bonds and due allowance has been made for interest requirements due six months thereafter, making reasonable allowance for anticipated receipts, any surplus funds shall be used by the City of Avon Park for the purpose of purchasing for cancellation Refunding Bonds of the issue contemplated by the plan, which purchases shall be made in the following manner:

The City Council of the City of Avon Park shall designate a date, not less than thirty (30) nor more than forty-five (45) days from the time such date is designated, at which time the City Council will receive and consider in open session sealed offerings of said Refunding Bonds. The City Council shall give written notice of this date to any bondholders so requesting in writing. Notice of the time and place of receiving offerings shall be published once, not less than fifteen (15) days before the designated time, in at least two (2) publications, one of which shall be a newspaper having general circulation in the City of Avon Park, Highlands County, Florida, and the other shall be a financial journal published in

the City of New York. All of the surplus funds available, as provided under the plan, shall be used to purchase bonds at the lowest offered price. If, however, the City Council shall be dissatisfied with any or all offers received, it shall have the option to reject any or all such offers, and, within thirty-one (31) days thereafter, readvertise for additional sealed offerings and purchase the bonds so readvertised for at the lowest offered prices to the extent of absorbing all funds available. It is further provided that, after each such advertised purchase, the City Council may privately purchase additional bonds with subsequent surplus accumulations, as long as private purchases may be made on such basis as to assure a higher income yield than the highest yield calculated on bonds purchased pursuant to advertisement.

Section 7. The Fiscal Agent has agreed with the City of Avon Park to defray all expenses involved in the following steps incident to the refunding:

1. Assembling the bonds proposed to be refunded;

2. Printing the Refunding Bonds;

3. Representing the City in legal proceedings to validate said Refunding Bonds;

98 4. Obtaining approving opinion of nationally recognized bond counsel upon the issuance and validation of Refunding Bonds, said counsel to be selected by said Fiscal Agent.

5. All other expenses in connection with the refunding which may be approved by said Fiscal Agent.

It is also provided in the plan that the City of Avon Park will retain counsel to represent it until the re-

funding proceedings have been completed, and the Fiscal Agent has agreed to indemnify the City of Avon Park for its costs in this connection, the total thereof to be in an amount to be agreed upon between the City and the Fiscal Agent.

Section 8. The plan provides that the Fiscal Agent shall be compensated for its services and reimbursed for its costs incident to the refunding of the outstanding indebtedness of the City of Avon Park by assessing charges against the participating bondholders, the amount of such charges to be a matter between the Fiscal Agent and the bondholders participating in the plan. The charge has been set at $40.00 per $1,000.00 bond tendered for exchange, or ratable portion thereof in the case of bonds of less than $1,000.00 denomination.

Section 9. (A) Provision is made that all taxes levied by the City for the years 1937, and subsequent, shall be payable in legal tender only. The City intends to adjust the amounts due on account of delinquent taxes for the years 1936, and prior, and special assessment liens, and interest thereon, in a manner which is designed to result in collection of the reasonable maximum equity therein.

(B) As a part of said plan it is provided that evidences of all interest accrued to July 1, 1937, shall be deposited in escrow with The First National Bank of Chicago, Illinois, or such other escrow agent as may be approved by the Federal Judge having jurisdiction of the cause of which this plan is a part, against which Escrow the said Escrow Agent shall issue certificates of deposit in the names of the owners of the equity thereof, said certificates to identify the amount of interest accruals evidenced thereby.

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The certificates of deposit so issued by the Escrow Agent shall be in assignable form, subject to the right of transfer and assignment at the expense of the particular certificate holders seeking to make such transfer and assignment, but said certificate shall not be negotiable. The said Escrow shall be maintained until two years after the date of first exchange of refunding bonds under this plan. At the expiration of that period the said Escrow shall be considered closed.

The proceeds of the collection of said adjusted taxes or special assessment liens and interest thereon, as set forth in (A) of this section, as available, shall be remitted to the Escrow Agent and,

(a) As to said particular proceeds remitted to the said Escrow Agent during the first six months immediately following the date of first exchange of refunding bonds under this plan, the said Escrow Agent shall reduce the amount owed by the said City under the Escrow by such amount as will result in said particular proceeds constituting a pro tanto payment and discharge at fifty per cent. (50%) of par.

(b) As to said particular proceeds remitted to the said Escrow Agent during the next succeeding six months the said Escrow Agent shall reduce the amount owed by the said City under the Escrow by such amount as will result in said particular proceeds constituting a pro tanto payment and discharge at sixty per cent. (60%) of par.

(c) As to said particular proceeds remitted to the said Escrow Agent during the next succeeding six months the said Escrow Agent shall reduce the amount owed by the said City under the Escrow by such amount as will result in said particular proceeds constituting a pro

tanto payment and discharge at seventy per cent. (70%) of par.

(d) As to said particular proceeds remitted to the said Escrow Agent during the next succeeding six (6) months, the said Escrow Agent shall reduce the amount owed by the said City under the Escrow by such amount as will result in said particular proceeds constituting a pro tanto payment and discharge at seventy-five per cent. (75%) of par.

All of said money so received by the Escrow Agent shall be held by it until the Escrow has been closed. At that time the moneys available shall be pro rated among the owners of outstanding certificates representing an interest in said Escrow and said funds shall be paid by said Escrow Agent to said certificate holders with proper and reasonable deduction being made by the said Escrow Agent for services in handling the Escrow. The owner of any such certificate may sell and assign his equity therein direct to the City at a price of less than fifty per cent. (50%) of the amount represented thereby during the first six months period; at a price of less than sixty per cent. (60%) of the amount represented thereby during the next succeeding six months period; at a price of less than seventy per cent. (70%) of the amount represented thereby during the next succeeding six months period; and at a price of less than seventy-five per cent. (75%) of the amount represented thereby during the next succeeding six months period. The City may, upon the delivery of any such assigned certificate to the Escrow Agent and upon payment of the escrow charges, effect a reduction of the amount owed under the Escrow by the amount represented by any such certificate of deposit so assigned and delivered and any certificates so delivered shall be canceled and the items repre-

sented thereby shall be canceled and sent to the City in due course of business.

Immediately after the Escrow has been closed, the Escrow Agent shall (1) balance the said escrow account; (2) determine the pro rata interest therein of the owners of the respective certificates of deposit then outstanding; (3) apply in pro rata payments the sums received from the City, as hereinabove provided for, each dollar, or ratable portion thereof, having the effect of discharging pro rata portions of the amount escrowed in the percentages set forth above; (4) notify the City (a) of the gross amount still represented by the Escrow after such pro rata applications have been made and (b) of the escrowed amounts still represented by the individual certificates. The City shall then immediately take all steps necessary to validate its Refunding Bonds in an amount equal to the said remaining balance represented by the Escrow; and, upon the issuance of such refunding bonds, the same shall be transmitted to the said Escrow Agent for delivery by it to the owners of the certificates of deposit so remaining outstanding. At delivery, provision shall be made for the payment of interest then due on said Refunding Bonds. Said Refunding Bonds so to be delivered shall bear date of July 1, 1937; mature July 1, 1967; be in the same form and contain covenants as if they were a part of the issue of Refunding Bonds dated July 1, 1937; bear interest at the identical rates specified to be paid on the said Refunding Bonds of 1937; be in such denominations as shall be necessary to permit delivery of bonds to the respective certificate holders in multiples of $1,000.00, with odd-amount bonds provided for any balances less than $1,000.00 due any particular certificate holder. The certificates shall be surrendered to the Escrow Agent upon delivery of the said Refunding Bonds; and said certificates, as well as all of the evidences of accrued interest represented by the said certificates, shall thereupon be

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canceled, and the said evidence of accrued interest shall be sent to the City.

Provided, however, that in lieu of taking the certificates of deposit, and at the end of the escrow period, the Refunding Bonds represented thereby, as hereinabove provided, any holder may, at his option, which shall be exercised by declaration in writing on or before 10 days after the issuance of the said certificates of deposit, receive from the Fiscal Agent, R. E. Crummer & Company, in lieu of said certificates, an amount of money equal to the sum which would be payable if the interest accruals to July 1, 1937, had evidenced interest at the rate of two per cent. (2%) per anunm, and the exchange charge had been $20.00 per $1,000.00 bond tendered for exchange, or ratable portion thereof in the case of bonds of less than $1,000.00 denomination; and, in such event, such certificates of deposit shall be issued or assigned to R. E. Crummer & Company, who shall hold the same in like manner as other holders and receive the Refunding Bonds to be issued therefor.

Dated this 23rd day of February, 1939.

CITY OF AVON PARK, FLORIDA.

Order Permitting Filing of Modified Plan of Composition, and Finding the Same is not adverse to the Interests of Creditors was filed Feb. 28, 1939; copy of said order being as follows:

ORDER PERMITTING FILING OF MODIFIED PLAN OF COMPOSITION, AND FINDING THE SAME IS NOT ADVERSE TO THE INTERESTS OF CREDITORS.

(Title Omitted.)

This cause coming on ex parte for further hearing this day on the petition of the City of Avon Park,

Florida, submitting certain changes and modifications in the refunding plan heretofore filed in these proceedings dated April 23, 1938, and praying for an order permitting the filing of said changes and modifications, and adjudging that the plan of refunding, or composition, now involved in these proceedings is the plan of April 23, 1938, and so changed and modified, and finding and adjudging that in the opinion of the Court the said changes and modifications are not materially adverse to the interests of any creditor affected by said plan, and that therefore no notice is necessary; and the Court having considered said motion and heard counsel for the petitioner, and being advised in the premises, is of the opinion that said changes and modifications in the plan of composition dated April 23, 1938, are not materially adverse to the interests of any creditor affected by said plan, for the reason that it appears from said plan as modified, that in addition to the provisions contained in Section 9 of the original plan, giving the Fiscal Agent the right to purchase, at the time of the exchange of refunding bonds for outstanding bonds, all accrued interest on outstanding bonds to July 1, 1937, at the equivalent of a sum of money which would be payable if said accruals evidenced interest at two per cent (2%) per annum, such interest accruals to be held by the Fiscal Agent subject
104 to the order of the City of Avon Park at prices and for the periods in said original plan of composition set out, the creditor is given the option to retain his interest accruals to July 1, 1937, on his outstanding bonds, to be represented by certificates of deposit to be escrowed with the First National Bank of Chicago, or some other bank; and by exercising the said option as is provided in Section 9 (B) of the plan of composition as modified, said creditor may either sell said certificates to the City of Avon Park at prices less than the schedule in said plan set out to be paid the Fiscal Agent for such certificates of deposit, or, in lieu thereof,

he may receive new refunding bonds for said certificates of deposit, less his portion of the expenses of the escrow and the refunding charges,—said refunding bonds to be in all respects identical with the refunding bonds authorized by the plan for the refunding of principal of outstanding bonds of said City of Avon Park;

It Is Thereupon Ordered and Adjudged that petitioner be permitted to file its modified plan as the same is set forth in Exhibit 1 to the petition this day filed herein, and that the plan of composition or refunding now involved in these proceedings is the plan of April 23, 1938, as so changed and modified.

It Is Further Ordered and Adjudged that the said plan as so changed and modified is not materially adverse to the interests of any creditor affected by said plan, and that no notice of the filing thereof is necessary.

Done and Ordered in Chambers at Tampa, Florida, this 28th day of February, A. D. 1939.

ALEXANDER AKERMAN,
Judge of Said Court.

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105 On March 31, 1939, testimony in question and answer form was filed, said testimony being in words and form as follows. Exhibits have been omitted.

HEARING BEFORE SPECIAL MASTER.

106 (Title Omitted.)

This being the day appointed by the Special Master for the hearing, pursuant to an Order made by the Court

in the above entitled cause on the 31st day of October, A. D. 1938, of which meeting due notice was given by more than ten (10) days due notice by mail to all known creditors of the municipal debtor named in the petition, at the respective addresses of each of such creditors, I, the Special Master, do hereby certify that I sat at the time and place mentioned in said notice and order, to-wit, at Rooms 225-6 Beymer Building, in the City of Winter Haven, Florida, on the 16th day of March, A. D. 1939, at ten o'clock in the forenoon, for the purpose of classifying claims, taking testimony, etc. and other proper business that might come before the hearing.

The following appearances were noted at said hearing, viz:

Allen E. Walker, Special Master,

Henry L. Jollay and T. A. McNicholas, Attorneys for Petitioner, City of Avon Park, Florida.

R. D. Reddick, City Clerk of Avon Park, Florida.

D. F. Canfield, Auditor of the City of Avon Park, Florida.

W. John Phillips and Harry L. Thompson, of the firm of Phillips & Thompson, Attorneys, representing Lawrence W. Rittenoure.

H. C. Crittenden, Attorney, representing Roger W. Babson.

107 Giles J. Patterson, Attorney, representing William E. Sweet and United Mutual Life Insurance Company.

The following claims were submitted as claims on general bonds of the City of Avon Park, Florida and are hereby allowed and classified as being in one class, payable without preference from the same general sources, viz., ad valorem taxes.

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
1.	Mrs. Rose K. Raithel, 60 Kingsbury Place, St. Louis, Mo.	$2,000	$ 900.00
2.	Board of County Commissioners, Highlands County, Sebring, Fla.	4,000	.....
3.	Smith Brothers, Clay Center, Kansas	5,000	2,100.00
4.	Florida Municipal Bondholders' Protective Committee, Room 406 Hildebrandt Bldg., Jacksonville, Fla.	51,500	20,270.83
5.	Thomas M. Cook & Company, West Palm Beach, Fla.	23,000	715.00
6.	J. O. Adams, 400 Roosevelt Bldg., Los Angeles, Calif.	3,000	1,305.00
7.	Charles H. Albers, Receiver Northwestern Trust & Savings Bank, 7 So. Dearborn St., Chicago, Ill.	5,000	.....
8.	Harry F. Berls, 1727¾ N. Sycamore Ave., Los Angeles, Calif...	20,000	.....
9.	P. M. Boyd, 215 E. Duval St., Jacksonville, Fla.	4,000	.....
10.	Brown-Crummer Investment Co., Room 800 First Natl. Bank Bldg., Chicago, Ill.	3,000	1,305.00
11.	R. B. Bryan, Route #2, Madison Fla.	3,000	.....
12.	Johanna Calmer by Warren J. Bleyaert, Agent, 220 W. Sixth St., Monroe, Mich.	2,000	910.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
13.	Fred P. Carr, 1000 Insurance Exchange Bldg., Des Moines, Iowa	3,000	45.00
14.	Bank of Cattaraugus, Cattaraugus, N. Y.	1,000	.....
15.	R. E. Crummer & Company, Chicago, Ill.	....	25,243.33
16.	W. P. Davis, 314 Equitable Bldg., Des Moines, Iowa	10,000	2,495.00
17.	Erwin R. Effler & LeRoy E. Eastman, Trustees U/W of Mary Sedate McCann, deceased, Toledo, Ohio	2,000	.....
18.	First National Bank of Monroe, Monroe, Mich.	3,000	1,365.00
19.	Oliver C. Foreman, 58 E. Washington St., 2018 Chicago, Ill.	5,000	.....
20.	Mrs. Dorothy B. Gossard, 6707 Colorado St., Overland Park, Kansas	10,000	4,350.00
21.	Julia D. Green, 171 W. 57th St., Shelton Island Heights, N. Y.	1,000	.....
22.	Edwin M. Hadley, Jr., 629 Kimball Rd., Highland Park, Ill.	5,000	.....
23.	A. S. Huyck & Company, 100 West Monroe St., Chicago, Ill.	10,000	.....
24.	Walter J. Krager, Cattaraugus, N. Y.	1,000	.....
25.	O. J. Kruger, 111 W. Fifth St., St. Paul, Minn.	5,000	75.00
26.	Henry F. Lankow, Little Valley, N. Y.	2,000	620.00
27.	Clifford Lathrop, First Natl. Bank Bldg., Wichita, Kansas	16,000	1,920.00
28.	Frank Lathrop, First Natl. Bank Bldg., Wichita, Kansas	10,000	1,350.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
29.	Life & Casualty Insurance Company of Tennessee, 159–4th Ave. N., Nashville, Tenn.	5,000	800.00
30.	Rene D. Mallett, Hendersonville, N. C.	1,000	100.00
31.	Prairie State Bank, Augusta, Kansas	18,000	1,170.00
32.	J. D. Puller, Thomas D. Green and W. J. Zalesky, Trustees of J. T. Dismukes, deceased. (Mr. Puller, St. Augustine, Fla.)	25,000	.....
33.	J. D. Puller, St. Augustine, Fla. ..	2,000	.....
34.	Howard Scott, Neodesha, Kan.....	1,000	420.00
35.	W. R. Stone, Bristol, Tenn.	5,000	.....
36.	Security Benefit Association, Topeka, Kansas	38,000	5,130.00
37.	Susan Sheaff, Holcomb, Ill.	4,000	160.00
38.	C. L. Swan, Erie, Kansas	5,000	1,200.00
39.	Emma Thornton, Coldwater, Kansas	5,000	375.00
40.	Nellie R. Yeasting, 2817 Powhattan Parkway, Toledo, Ohio	5,000	.....
41.	Elizabeth D. Zalesky, c/o National Savings & Trust Co., Washington, D. C.	1,000	.....
42.	Lawrence Leirman, Winfield, Kansas	7,000	315.00
43.	Carl A. Morawitz, Wichita, Kansas	2,000	780.00
44.	Curtis C. Coxe, as Agent for Trustees of assets of former People's Bank for Savings, St. Augustine, Fla.	8,000	3,680.00
45.	R. E. Crummer & Co., Chicago, Ill.	10,000	450.00
46.	The Brown-Crummer Investment Co., Wichita, Kansas ..... (Claim #46 covered by judgments.)	24,000	58,535.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
47.	R. E. Crummer & Company, Chicago, Ill. ..... (Claim #47 covered by judgments.)	.....	2,460.00
48.	The Security Benefit Assn., Topeka, Kansas ..... (Claim #48 covered by judgments.) Claim #46 is passed for time being until claimant files assignments of mortgages attached thereto.	.....	11,400.00
49.	Aid Association for Lutherans, Appleton, Wis.	5,000	2,300.00
50.	Margaretha Vogt, Box 753, Avon Park, Fla.	1,000	.....
51.	F. R. Messenger, 300 N. Terrace Drive, Wichita, Kan.	9,000	4,140.00
52.	R. E. Crummer & Company, Chicago, Ill.	95,000	14,168.33
53.	R. E. Crummer & Company, Chicago, Ill.	1,000	1,540.00
54.	Brown-Crummer Investment Co., Wichita, Kansas	146,000	35,774.17
55.	F. C. Swinburne, Box 22, Clearwater, Fla.	5,000	2,095.00
56.	Roger W. Babson, by Touchton & Crittenden, Attys., Winter Haven, Fla. ..... (Claim #56 covered by judgment)	.....	.....
57.	William E. Sweet, Denver, Colo... (Claim #57 covered by judgment)	11,000	1,155.00
58.	The American United Life Insurance Co., Indianapolis, Ind.	35,000	4,550.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
59.	American United Life Ins. Co., Indianapolis, Ind. ..... (Claim #59 covered by judgment)	.....	11,550.00
60.	Lawrence W. Rittenoure, by Harry Thompson, Attorney, Clearwater, (Claim #60 covered by judgment)		

Claims Nos. 56, 57, 59 and 60, represented by judgments and not accepting the plan as outlined by the Petitioner, are to be allowed only in the amount of the claim representing the total amount of bonds and interest coupons up to July 1, 1937. This allowance, of course, is subject to any revision of the plan that may be made.

The Petitioner, City of Avon Park, acknowledges the validity of all claims, except as to the amounts represented by the judgments in Claims Nos. 56, 57, 59 and 60.

Mr. Patterson:

I object to the introduction of any proofs of claims unless the City is going to support those claims with some testimony as to who got them or how they got them, or something to show they were furnished to the City, because the objecting creditors can not be deprived of the right of cross examination of parties with
111 reference to the contents of the written proofs and we have a right to cross examine representatives of the bankrupt and at the time the proofs are introduced by the City. That goes to all claims that are filed. My second objection goes to claims based on judgments: We object to the proof of claim based upon a judgment unless the proof is made by the owner of the judgment and it affirmatively appears from the proofs offered that there is no showing made in Claim #46 that the original judgment creditor has made the proof of

claim, the only statement being by a bank as to the fact that the original bonds and coupons have been mutilated after being filed in Court with the judgment. Third, we object to statement of Counsel for the City that these judgments have been assigned to any other party as there is no proof of that fact. Fourth, we object to proofs of claim based upon any bond or coupons which have been merged into judgment as the proof is by parties who are not holders of the judgment and there is no proof of the assignment of the judgment and it affirmatively appears that the bonds and coupons were destroyed before the judgment was obtained by the original judgment creditor.

I object also to proofs of claim of R. E. Crummer and Company on the ground that the consent given by them can not be included because it affirmatively appears from the Petition that R. E. Crummer Company are agents of the City and under the statute bonds owned or controlled by the City can not be computed in determining the percentage of consenting creditors. I also object to proof of these on the further ground that if Crummer & Company is affirmatively shown to be agents of the City, it is not made to appear whether the bonds and coupons sought to be proved were acquired before they became agents of the City or after, or if after, the price of the same and whether or not the agent is seeking to proceed at the expense of City by purchasing
112 obligations of the City who is its employer. We object to the proof of claim of Brown-Crummer Company on the ground it affirmatively appears that Mr. Crummer may have been an officer and there is no proof to deny this fact and that claims filed by it, if Mr. Crummer is an officer of that company, would be subject to the same objection made to claims of R. E. Crummer Company unless there is proof to sustain the contrary.

Court overrules objections. Claimant is directed to supply assignments of judgments included in claims filed.

Court reserves ruling on all judgments as to amounts until such time as proper amounts are given.

Mr. Crittenden:
If the Court please, I want to offer in evidence the judgment of Roger W. Babson attached to proof of claim #56 and I also would like to offer in evidence the certificate of the Clerk showing the securities merged in the judgment also attached to claim #56.

Received in evidence and marked Exhibits "A" and "B", respectively, of Roger W. Babson.

Mr. Jollay:
As to Claim #60, it will appear from this certificate of the Clerk that the judgment is based in part upon notes of the City of Avon Park, dated December 1, 1927, due December 1, 1929, payable June 1st and December 1st, in the amount of $25,000 principal and accrued interest to an undetermined amount. If the Court please, the City objects to the introduction of the claim so far as that amount is concerned because the plan of composition, as will appear when we introduce testimony, does not contemplate refunding that particular portion of that judgment. They were issued under special act and bonds could not be issued for them without approving vote of freeholders.

113 Claim will be received and rulings on objections will be reserved.

The following list of claimants consented in writing to the plan as filed by the Petitioner, City of Avon Park, Florida, viz:

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
1.	Mrs. Rose K. Raithel, 60 Kingsbury Place, St. Louis, Mo.	$2,000	$ 900.00
2.	Board of County Commissioners, Highlands County, Sebring, Fla.	4,000	.....
4.	Florida Municipal Bondholders' Protective Committee, Room 406 Hildebrandt Bldg., Jacksonville, Fla.	51,500	20,270.83
5.	Thomas M. Cook & Company, West Palm Beach, Fla.	23,000	715.00
6.	J. O. Adams, 400 Roosevelt Bldg., Los Angeles, Calif.	3,000	1,305.00
7.	Charles H. Albers, Receiver Northwestern Trust & Savings Bank, 7 So. Dearborn St., Chicago, Ill.	5,000	.....
8.	Harry F. Berls, 1727¾ N. Sycamore Ave., Los Angeles, Calif.	20,000	.....
9.	P. M. Boyd, 215 E. Duval St., Jacksonville, Fla.	4,000	.....
10.	Brown-Crummer Investment Co., Room 800 First Natl. Bank Bldg., Chicago, Ill.	3,000	1,.305.00
11.	R. B. Bryan, Route #2, Madison Fla.	3,000	.....
12.	Johanna Calmer by Warren J. Bleyaert, Agent, 220 W. Sixth St., Monroe, Mich.	2,000	910.00
13.	Fred P. Carr, 1000 Insurance Exchange Bldg., Des Moines, Iowa	3,000	45.00
14.	Bank of Cattaraugus, Cattaraugus, N. Y.	1,000	.....
15.	R. E. Crummer & Company, Chicago, Ill.	....	25,243.33
16.	W. P. Davis, 314 Equitable Bldg., Des Moines, Iowa	10,000	2,495.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
17.	Erwin R. Effler & LeRoy E. Eastman, Trustees U/W of Mary Sedate McCann, deceased, Toledo, Ohio	2,000	.....
18.	First National Bank of Monroe, Monroe, Mich.	3,000	1,365.00
19.	Oliver C. Foreman, 58 E. Washington St., 2018 Chicago, Ill.	5,000	.....
20.	Mrs. Dorothy B. Gossard, 6707 Colorado St., Overland Park, Kansas	10,000	4,350.00
21.	Julia D. Green, 171 W. 57th St., Shelton Island Heights, N. Y.	1,000	.....
22.	Edwin M. Hadley, Jr., 629 Kimball Rd., Highland Park, Ill.	5,000	.....
23.	A. S. Huyck & Company, 100 West Monroe St., Chicago, Ill.	10,000	.....
24.	Walter J. Krager, Cattaraugus, N. Y.	1,000	.....
25.	O. J. Kruger, 111 W. Fifth St., St. Paul, Minn.	5,000	75.00
26.	Henry F. Lankow, Little Valley, N. Y.	2,000	620.00
27.	Clifford Lathrop, First Natl. Bank Bldg., Wichita, Kansas	16,000	1,920.00
28.	Frank Lathrop, First Natl. Bank Bldg., Wichita, Kansas	10,000	1,350.00
29.	Life & Casualty Insurance Company of Tennessee, 159–4th Ave. N., Nashville, Tenn.	5,000	800.00
30.	Rene D. Mallett, Hendersonville, N. C.	1,000	100.00
31.	Prairie State Bank, Augusta, Kansas	18,000	1,170.00
32.	J. D. Puller, Thomas D. Green and W. J. Zalesky, Trustees of J. T. Dismukes, deceased. (Mr. Puller, St. Augustine, Fla.)	25,000	.....

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
33.	J. D. Puller, St. Augustine, Fla. ..	2,000	.....
34.	Howard Scott, Neodesha, Kan.....	1,000	420.00
35.	W. R. Stone, Bristol, Tenn.	5,000	.....
36.	Security Benefit Association, Topeka, Kansas	38,000	5,130.00
37.	Susan Sheaff, Holcomb, Ill.	4,000	160.00
38.	C. L. Swan, Erie, Kansas	5,000	1,200.00
39.	Emma Thornton, Coldwater, Kansas	5,000	375.00
40.	Nellie R. Yeasting, 2817 Powhattan Parkway, Toledo, Ohio	5,000	.....
41.	Elizabeth D. Zalesky, c/o National Savings & Trust Co., Washington, D. C.	1,000	.....
42.	Lawrence Leirman, Winfield, Kansas	7,000	315.00
43.	Carl A. Morawitz, Wichita, Kansas	2,000	780.00
44.	Curtis C. Coxe, as Agent for Trustees of assets of former People's Bank for Savings, St. Augustine, Fla.	8,000	3,680.00
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47.	R. E. Crummer & Company, Chicago, Ill. ..... (Claim #47 covered by judgments.)	.....	2,460.00
48.	The Security Benefit Assn., Topeka, Kansas ..... (Claim #48 covered by judgments.)	.....	11,400.00
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Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
50.	Margaretha Vogt, Box 753, Avon Park, Fla.	1,000	.....
51.	F. R. Messenger, 300 N. Terrace Drive, Wichita, Kan.	9,000	4,140.00
52.	R. E. Crummer & Company, Chicago, Ill.	95,000	14,168.33
53.	R. E. Crummer & Company, Chicago, Ill.	1,000	1,540.00
54.	Brown-Crummer Investment Co., Wichita, Kansas	146,000	35,774.17

116 Whereupon, following the allowance and classification of claims, the City of Avon Park, Florida, offered testimony in support of its Petition filed herein.

R. D. REDDICK, being first duly sworn, on oath, testified on behalf of City of Avon Park, Florida, as follows:

Examination by Mr. Jollay:

It is stipulated by and between counsel for the City and objecting creditors that Petitioner, City of Avon Park, Florida is a municipality existing under constitutional laws of the State of Florida, located in Highlands County, Florida within the Southern District of Florida, and that it is a municipality within the meaning of the national bankruptcy act as amended; it is stipulated also that the total outstanding bonds are $865,500.00 (subject to correction that may be necessary) and that the total interest is $358,251.76, which may be subject to a little correction, as of July 1, 1937, the date of the plan. The total bonds and interest as of that date is $1,283,751.76; and that the City is unable to pay its debts as they mature.

Q. Will you state your name?

A. R. D. Reddick.

Q. Where do you live, Mr. Reddick?

A. Avon Park, Florida.

Q. What, if any, official position do you hold?

A. City Clerk and Collector.

Q. How long have you held such position?

A. January 15, 1938.

Q. As City Clerk, Mr. Reddick, do you have in your exclusive custody and control the records of the City with reference to its tax rolls and its bonded debts and other like records?

A. Not exclusively.

117 Q. Who else has?

A. City Auditor.

Q. What particular books or documents does he have control of or do you have joint control?

A. Joint control.

Q. Now, Mr. Reddick, have you made up from your books or do you have with you a statement showing the amount of the matured bonds of the City of Avon Park as of July 1, 1937?

A. I have a notation on the plan.

Q. Will you testify as to what amount of bonds are outstanding and past due as of July 1, 1937?

A. The outstanding bonds according to my calculations are the same as set forth in the plan.

Q. Will you state what that is?

A. $682,500.00.

Q. What was the amount of outstanding interest past due, whether represented by coupons or not, as of July 1, 1937?

A. The interest accrued, according to my calculations, vary slightly.

Q. What is the interest according to your calculations made from the books—can you state what it is?

A. Not definitely. We only checked our books against this plan. We found according to refunding bonds, 5/1/25, a small discrepancy.

Q. Have you added the amount the books show?

A. No, sir.

Q. Can you do that now?

A. Yes, sir.

Q. Will you state what the figures are now?

A. According to my calculations, interest figures $326,-802.00 to July 1, 1937. I would also like to state these figures were compiled from the bond register which showed vacancies in the payment of coupons and
118 to the best of my calculations, we had to make such adjustments as we found to be correct.

Mr. Jollay:

We reserve the right to introduce the Auditor who audited the books who can give the correct figure.

Right reserved.

Q. Mr. Reddick, do you have in your custody and control the tax assessment roll and records of collections over the period of the last several years?

A. Yes, sir.

Q. Have you made a statement from the books, showing the assessed valuations from 1926 to 1937, inclusive, and the amounts of taxes levied and amounts collected and amounts remaining uncollected?

A. Yes, sir.

Q. And you made that from the books of the City?

A. Yes, sir.

Q. I will hand you a paper and ask you to identify it.

A. I do identify this paper.

Q. What is it?

A. A record of the valuations, of the tax levied in Avon Park, amount collected and amount uncollected thereon for 1926-37, inclusive.

Q. And you made that up from the books of the City?

A. Yes, sir.

Q. And it is correct?

A. Yes, sir.

Mr. Jollay:

I offer in evidence the statement identified by the witness as Petitioner's Exhibit No. 1.

Received in evidence, marked PETITIONER'S EXHIBIT No. 1.

Q. Mr. Reddick, this statement does show a very considerable reduction in the assessed valuation of property from 1926, about $6,536,000, and in 1937, $2,504,000. How do you account for that reduction?

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A. Of course, I had nothing to do with valuations of the property. Any question I made would be an assumed question, but the value of the property has decreased.

Q. It has actually depreciated?

A. Yes.

Q. Due to what causes—causes surrounding Avon Park particularly, or general economic conditions?

A. General economic conditions.

Examination by Special Master:

Q. That 1926 valuation was boom-time valuations, was it not?

A. That is right.

Q. The Florida boom collapsed about that time, did it not?

A. It tapered off in 1926.

Q. And has there been a general depression in the country from 1929 on?

A. Yes.

Direct Examination Resumed.

By Mr. Jollay:

Q. What is the situation of Avon Park with reference to collection of taxes since you have been connected with the City for the past, say, fifteen months? About what percentage of taxes have you been able to collect?

A. I could not say definitely without referring to this.

Q. You may do that.

A. According to this Exhibit No. 1, the collections on taxes are less than 40%.

Q. Do you know if that represents cash collections or not.

A. This does represent cash collections since I have been in.

Q. Prior to you going in, do you know if they
120 collected in cash or bonds?

A. A considerable amount of bonds.

Q. I hand you a paper purporting to be the refunding plan of the City of Avon Park, Florida, dated the 23rd of April, 1938, and ask you to identify it. What is it?

A. It is a refunding plan adopted by the City Council April, 1938—the 23rd day.

Mr. Thompson:

We object to this—because it is not complete in itself. There was a contract that goes along with this and is a part of this business.

Objection to introduction of the original will be overruled and plan will be received in evidence as Petitioner's

Exhibit No. 2, with the understanding that it will be followed with other documentary evidence.

Mr. Jollay:

I now offer in evidence the contract and resolution adopted by the City—contract between City of Avon Park and R. E. Crummer & Company, dated the 17th day of July, 1937, attached to the original petition as Exhibit "B".

Received in evidence and marked Petitioner's Exhibit No. 3.

Q. Mr. Reddick identify this paper.

A. I identify it as a resolution adopted by the City Council of Avon Park on the 23rd day of February, 1939, which adopted the modified plan attached to it as Exhibit "A".

Mr. Jollay:

I now offer in evidence the resolution of the City of Avon Park, dated February 23, 1939, adopting the plan of composition of the City of Avon Park as modified.

Mr. Phillips:

We object to proceeding under a modified plan on the ground there is no proof that creditors have been given notice and that consents filed, except a few today, with proofs of claim include the modifications of the
121 plan, and the statement in the Court's order that it does not adversely affect creditors, because it doubles the costs of the creditors, raising it from $20 to $40 a bond, so I should think that would be right material.

Objection overruled, under Court's Order, and Resolution received in evidence and marked Petitioner's Exhibit No. 4.

(Hearing recessed until 2:00 P. M.)

Direct Examination of Mr. Reddick.

By Mr. Jollay:

Q. Mr. Reddick, I show you a paper which purports to be a resolution of the City Council of the City of Avon Park, adopted on the 12th day of August, 1938, adopting the plan of composition and authorizing the filing of this Petition in Bankruptcy. Is that paper correctly described in the question?

A. It is.

Q. Was that resolution adopted and is that a true copy?

A. It is.

Mr. Jollay:

I offer in evidence the resolution authorizing the filing of the petition in bankruptcy, attached to Petition herein as Exhibit "C".

Received in evidence and marked Petitioner's Exhibit No. 5.

Q. Mr. Reddick, has this plan of refunding now in evidence been adopted by the City of Avon Park in good faith and with the intention to carry it out, if finally approved and put in effect?

Mr. Phillips:

I object—it is calling for a state of mind of others with which he could not possibly be familiar except from hearsay.

Objection overruled.

A. They did, sir.

122 Q. In your opinion, will the City, from your knowledge of the conditions in Avon Park and the attitude of the government and people, in your opinion, do you think the City will in good faith levy the taxes and do all that is required of them to do under this plan?

A. It is my opinion the City will levy the taxes put in the plan of refunding.

Q. Is the City's taxing power for the purpose of paying bonds under its Charter unlimited?

A. Yes.

Q. They do have power to levy taxes and can levy taxes for the payment of this plan—for payment of bonds?

A. Yes, sir.

Examination.

By Special Master:

Q. How long have you lived in Avon Park?

A. Since 1928.

Q. Do you know about what the population of Avon Park is at this time?

A. Approximately 3500.

Q. Do you know what percentage of that population is colored?

A. No, sir.

Q. Do you have any idea?

A. No, sir.

Q. What is the condition of the City today as to business activity compared with the time that these bonds sought to be refunded were issued? Is the City in a more flourishing condition or less flourishing?

A. Less flourishing.

Q. What other source of income does the City of Avon Park have other than from ad valorem taxes?

A. Only taxes and licenses—fines.

Q. Do they own any light, water or gas plants?

123 A. No.

Cross Examination.

By Mr. Patterson:

Q. You did not separate the debt service from ad valorem tax collections in that sheet, did you?

A. No, sir.

Q. The amount collected there for the different years is the total for all purposes—is that correct?

A. That is right.

Q. Down at the bottom you state—"Real Estate foreclosed shown as collected, $206,696.79"—what does that mean?

A. That means that the City in an attempt to collect taxes foreclosed that much property and it is shown on the records.

Q. Where does it appear there—scattered in the different years?

A. Yes, sir.

Q. How long has it been since there was any foreclosure?

A. I don't recall.

Q. Did the City accept the taxes for the administration without requiring the payment of taxes levied for debt service? Has that been done to any extent?

A. No.

Q. Did you take bonds in payment of debt service tax instead of money and then collect money for the administration expense?

A. Since I have been in office we have not taken any bonds.

Q. Do you know anything about before that?

A. No.

Q. Now, you testified as to the amount of bonds and coupons approximately outstanding in 1937. Have
124 any of those bonds and coupons been paid since then?

A. According to my verification of the plan, the figures are the same as City records.

Q. There have been no payments to bondholders since you have been in office?

A. No, sir.

Q. Either for principal or interest?

A. Of course, the payment, I can not say.

Q. Wasn't there a tax levy spread for some bondholders and collected for their benefits?

A. There were levies made—I presume for mandamus and judgments.

Q. Which ones?

A. I could not tell—for what year?

Q. 1937—

A. Taxes were levied for the writ of J. W. Meredith.

Q. Was any tax levied for Sweet's judgment?

A. No.

Q. Or for United Mutual judgment?

A. No, sir.

Q. Wasn't there a peremptory writ requiring the levy for both judgments?

A. Since this was levied before my term with the City I don't know how it was arranged.

Q. You know there was no levy made for the judgments I represent?

A. Yes, sir.

Q. You don't know if there was a peremptory writ issued or not?

A. No, sir.

Q. You know there was a tax levied for the Meredith judgment?

A. Yes, sir.

Q. Do you know who that belongs to?
A. No, sir.
Q. Does it belong to R. E. Crummer or do
125 you know?
A. No.
Q. How much was paid on the Meredith judgment?
A. I don't know definitely.
Q. You don't know how much was paid to them?
A. No, sir.
Q. Was there any judgment for Meredith?
A. For what year?
Q. Any year. Did he have any judgment?
A. I don't know, sir.
Q. You said just now you made a levy for his judgment and I am asking you—
A. According to the minutes on record that levy was made for writ of mandamus.
Q. At whose request was that levy made?
A. The levy was made prior to my office and I am not in a position to give details.
Q. Did you remit any of the money collected from that levy?
A. I don't remit.
Q. You don't have to countersign moneys?
A. No.
Q. Don't you know, as a matter of fact, the money has been paid to Mr. Crummer since this was filed?
A. I have nothing to do with that.
Q. I asked, do you know it has been collected?
A. No.
Q. And your statement is now that no bonds or interest was paid since July 1, 1937?
A. I could not say what happened prior to January 15, 1938. There has been none paid since that time.
Q. None paid since you went in office?
A. That is right.

Q. Except on Meredith's claim?

A. Well, I am not disbursing officer and I
126 could not say anything definitely.

Q. You don't have to be disbursing officer, if you know it, and you said a while ago you knew it. Have you taken any bonds or coupons in payment of taxes since you have been in office?

A. No, sir.

Q. None at all?

A. None at all.

Q. Would they be paid to you?

A. They would bs.

Q. You collect but you don't disburse?

A. That is right.

Q. If you collect, you ought to know if there have been collections made for Meredith or not.

A. There have been collections made.

Q. You don't know where the money is?

A. The City has the money.

Q. They are holding it for his account?

A. That is right.

Q. Do you know how much they are holding?

A. No, sir.

Q. Do you have any record you can refer to and give an approximation?

A. No, sir.

Q. Do you know how many mills were levied for him?

A. No.

Q. You testified this original resolution was adopted by the Council, authorizing this refunding plan and this printed slip that was mailed out and the one identified as representing the original plan—that is correct?

A. Yes, sir.

Q. Were you City Clerk when the resolution was adopted?

A. The original?

Q. Yes.

127 A. I was City Clerk when the modified plan resolution was adopted this year.

Q. But the original was adopted before you became City Clerk, was it not?

A. The present Council adopted the plan the 23rd of April, 1938—I was City Clerk.

Q. The original plan was adopted in July, 1937—the resolution that was adopted first—that was before you went in office, was it not? July, 1937?

A. It was before I went in office.

Q. You were not connected with the City at that time?

A. No.

Q. What steps have you taken as Clerk to carry out this refunding plan? Have you had any duties or has that been handled by the Crummer organization?

A. Steps of what nature?

Q. Any kind.

A. Only an attempt to collect taxes.

Q. Have you solicited the consent of any bondholders introduced here?

A. We sent all the claims out—the City.

Q. You mailed the letters?

A. Yes, sir.

Q. With the printed plan in it?

A. Yes, sir.

Q. Were they returned to you?

A. No, sir.

Q. Nothing was returned to you?

A. No, sir.

Q. Did you make any personal solicitation of any of the creditors who filed their consents or did Mr. Crummer's organization do that?

A. In fact, I was going through the plans and
128 naturally we encouraged people to accept it.

Q. Did you personally solicit?

A. I don't know if any of the persons I—

Q. Did they accept the plan?

A. Yes, sir.

Q. I want to find out whether you solicited the consents of any of these people who have filed.

A. Yes.

Q. Can you name any of them?

A. Not specifically.

Q. Most of them seem to be non-residents—I am not prepared to say there were not any—but did you make any trips out of Avon Park to solicit them?

A. No, sir.

Q. That was a part of Mr. Crummer's duties under his contract?

A. I think that the contract and plan—

Q. Can't you answer whether it was his duty or not?

A. I can not say.

Q. Now, with reference—you say the City has power to issue these bonds. Isn't it a fact there is a quo warranto proceedings pending today to determine the boundary of the City?

A. Yes.

Q. How long has that been pending?

A. Seven or eight years.

Q. How long has it been since the Supreme Court acted on it, do you know approximately?

Mr. Jollay:

I object—it is not in cross of anything on direct.

Objection sustained.

Q. I ask this: Has there been any proceedings under that quo warranto taken by the City since you have been in office?

A. I don't know, sir.

129 Q. You don't know of any but it is still pending?

A. Yes, sir.

Q. Then your statement about the City's power to issue these bonds and make pledges of taxes on these different areas has to be qualified, doesn't it, as to how that suit turns out, doesn't it?

Mr. Jollay:

I object to question—it is a matter of law.

Objection overruled.

A. I don't know.

Q. Since you have been in office, Mr. Reddick, you said the City had foreclosed some taxes. There have been no foreclosures since you have been in office?

A. No, sir.

Q. According to your statement here, you filed in evidence, there are still some very large sums of uncollected taxes that are due. Can you state whether or not since you have been in office the City has made any arrangement with Mr. Crummer about the purchase of the City bonds?

A. No, sir.

Q. You don't know?

A. No.

Q. You don't know whether he has bought any or not since the suit was pending?

A. No, sir.

Q. And the same thing applies to coupons?

A. That is right:

Mr. Jollay:

I want to move to strike the question unless he refers to R. E. Crummer & Company.

Motion denied.

Q. You said in response to the Master's question there are about 3500 people in the City. In which area?

A. In the area of the 1935 census, I believe.

130 Q. That is not limiting it to the original area that the quo warranto is trying to bring back?

A. I don't think that it is.

Q. You don't know how many people live in the area that is in dispute?

A. It is my opinion this census was taken on the inside area. The City limits at that time.

Q. That was before the limits were extended?

A. It was after the limits were contracted to the present limits.

Q. That does not include the population in the area that was extended?

A. In my opinion, it does not.

Q. Your valuations in this statement—does the same thing hold true there? For instance, you give 1937, $2,500,000. Is that the extended area or original area?

A. $2,504,087 is in all areas.

Q. A, B and C?

A. Yes.

Q. That holds true back to 1934 there?

A. In 1934 there was no assessment made in "C" territory.

Q. And 1935?

A. There was.

Q. And the same thing is true of 1936?

A. That is right.

Q. That probably accounts for the low valuation in 1934?

A. Yes, sir.

Q. Do you know what percentage of value of assessments is supposed to be made on that?

A. No, sir.

Q. You don't know whether that is 100% valuation or a smaller percent?

A. No, sir.

131 Cross Examination.

By Mr. Phillips:

Q. Mr. Reddick, I understood you to say on direct this morning that, in your opinion, the City had acted in good faith in its attempts to collect money for the bonded indebtedness—is that correct or don't you know?

A. The City has acted in good faith in attempts to—sure.

Q. How long have you been City Clerk?

A. Since January 15, 1938.

Q. You stated that the City had unlimited taxing power—is that correct?

A. So far as taxing for these, it is my opinion, that the City has taxing power to tax sufficient to cover bonds.

Q. And since you have been in office in January—over a year—you have not made any attempt to collect any money to pay this bonded indebtedness?

A. Personally, I have.

Q. Has any levy been made for bond debt service?

A. As stated before, the City in 1937 made a levy for Meredith. In 1938 they made a levy under the plan.

Q. Under the plan?

A. That is right.

Q. Was any levy made for the payment of $25,000 Rittenoure notes?

A. I don't know, sir.

Q. If there had been a levy made, you would know, wouldn't you?

A. It would be a matter of records. You could refer to records.

Q. You are in active charge of the Clerk's office?

A. Yes, sir.

Q. You know all that takes place?

A. Practically all.

Q. You don't know of any levy being made for the Rittenoure judgment?

A. No.

132 Q. You know peremptory writs of mandamus have been issued by the Federal Court of Judge Akerman requiring you to make some?

A. Not since I have been in office.

Q. They have been pending—you know of that?

A. No.

Q. As a matter of fact, didn't you come to our office in Clearwater?

A. No, sir.

Q. You knew those writs were outstanding?

A. Only be records.

Q. And the records show they were outstanding?

A. Of course, I did not dig into the suits myself.

Q. But so far as you know, no levy has been made to satisfy those writs?

A. Since I have been in office, no.

Q. You would not say then, that since you have been in office the City has made a bona fide good faith offer since January, 1938, to comply with the writs in the Federal Court for the payment of the Rittenoure judgment, would you? It hasn't done a thing, has it?

A. So far as I am concerned, since I have been there they have made levies such as I figured.

Q. And as you had stated, doesn't include anything for the Rittenoure judgment?

A. No, sir.

Q. Your books up there would disclose how the moneys collected for taxes by your predecessor in office were disposed of, wouldn't they?

A. No, I don't have charge of that end of the books.

Q. Don't you know, as a matter of fact, from your connection with the City, that it has been the practice there for years to collect from the tax payers only that

portion of their taxes to be applied to operating
133 expense and to not collect from them the portion to be applied to debt service?

A. I never heard anything about it.

Q. Didn't you tell my partner, Mr. Thompson, that very thing when he called on you?

A. I told him that in 1936 there were two levies made and in our attempts to collect we attempted to collect both.

Q. You separated the levies?

A. They were separate and distinct levies.

Q. One is for operating expense and one for debt service?

A. Yes.

Q. And you issued separate receipts?

A. Not necessarily.

Q. But you did separate the amounts paid?

A. Our receipts showed both columns.

Q. And when the tax payer came in to pay his taxes you collected, in most cases, the portion for operating expense?

A. The portion he would pay.

Q. In other words, if he owed $100.00 and $60.00 was for operating expense, he could pay the $60.00 and not pay the $40.00, is that correct?

Mr. Jollay:

I don't believe it is material—there is no issue raised on it.

Proceed with examination.

Q. Now, the Crummer Company has been directing all of these refunding proceedings, hasn't it? Isn't that correct?

A. I couldn't say.

Q. Do you know of anyone else who have had anythings to do with it with you—any other bondholder?

A. I haven't been active in the procedure other than what was disclosed from my work or our legal department.

134 Q. You know, don't you, that the City procured injunctions against the owners of all judgments against the City of Avon Park, except those judgments owned or controlled by the Crummer Company?

A. I don't know about the legal part of it.

Q. But you do know, since you have been Clerk, no attempt has been made to collect any money for any judgments except those Mr. Crummer or his Company owned or controlled?

A. We try to collect taxes as on the rolls.

Q. You haven't, in fact, allocated any funds for any other creditor of the City except those Mr. Crummer's Company controlled or owned, isn't that true? You know that, as City Clerk, don't you?

A. I don't know as I get the meaning of your question.

Q. You know there are several judgments outstanding against the City of Avon Park. Do you know that?

A. I think so.

Q. As City Clerk don't you know?

A. There are judgments.

Q. You are the man in charge of the billing there in the office?

A. I am in charge of the Clerk's office.

Q. Anyone who wants to know about the bonded indebtedness—you are the man they come to?

A. Yes.

Q. You are the source of information?

A. Yes—I have charge of the records.

Q. If I came to Avon Park to find out about the bonded indebtedness, you are the man I would talk to?

A. Yes and I would show you the records.

Q. You know, from those records, there are a number of judgments outstanding against the City?

A. There are.

Q. You know also you procured injunctions against the holders of all judgments, except those judg-
135 ments owned by Mr. Crummer or his Company?

A. I don't know about the legal proceedings.

Q. Do you know that Judge Barker, the Circuit Judge in your County, issued a writ of mandamus against the City in favor of the Rittenoure judgment seven, eight, nine or ten years ago?

A. I know there have been writs issued.

Q. And those writs have been ignored, haven't they?

A. In my opinion, there has been a levy made each year with the exception of 1937-38.

Q. Don't you know, no money has been paid over on those writs and whatever you have collected you have diverted for operating purposes?

A. I can not say that.

Q. In other words, you don't know very much about the whole situation at all, is that right?

A. I do know that the City is trying to live up to its contract and have done so during the time I have been there.

Q. Before you were there, you know Judge Akerman cited your predecessor to contempt?

A. I don't know. I was not an officer and politics was not in my line.

Q. Before you took over, you know the Federal Court was after you to get some money for the Rittenoure judgment, don't you?

Mr. Jollay:

I object to the question.

Objection overruled.

A. You refer to me or you refer to the City?

Q. The City.

A. I don't know what attempts they made to collect money from former employees.

136 Cross Examination.

By Mr. Thompson:

Q. Mr. Reddick, in support of the allegations of the Petition regarding the total levy, the amount collected and the amount delinquent, you have offered in evidence Exhibit #1, showing those facts more in detail. Now, do your records show how much of that money collected was collected in cash as distinguished from bonds and coupons?

A. There have been no collections in bonds and coupons since I have been in office.

Q. Do your records show—you furnished here in evidence purported record of 1936-7. What do your purported records show regarding collections in cash and collections in bonds or coupons?

A. I don't handle that end of the books and I am not in a position to say other than on a number of receipts it shows some collections in cash and some in bonds, but not since my term of office.

Q. Say $70,464.50 levied for 1937, of which $26,879.30 was collected. Your records do not show how much of that $26,879.30 was collected in cash?

A. This amount on 1937 taxes since I have been in office was collected in cash.

Q. Since you have been in office?

A. Yes.

Q. But before you came in office do your records show how much was collected in cash or in bonds?

A. I don't know.

Q. You cannot say?

A. I could, but I haven't had any occasion to.

Q. And then when this exhibit shows $21,278.95 collected in 1936, you don't know how much was in cash or how much in bonds?

A. Only from the time I have been in office all collections on any years levied were made in cash.

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Q. Regarding the item of $206,696.79 in real estate foreclosed, is a part of that $206,696.79 included in the $26,879.30 and the $21,278.95.

A. I think that is self-explanatory on the notation that that is collections.

Q. You mean we can take $206,696.79 and divide it among those ten years and get an estimate of where the money was applied?

A. They might go back farther than that.

Q. The Petition says $206,696.79 was during this period and I infer, 1926-1937, was collected by way of foreclosure of real estate. Was any of that included in this $26,879.30 which was collected, according to your exhibit, in 1937?

A. You will notice that it is according to collections for 1935 and prior.

Q. Mr. Reddick, what do your records show with reference to the expenditure for operating expenses of the City of Avon Park for the years, 1936-1937? I will refresh your memory by referring to these telegrams.

Mr. Jollay:

I object to anything not referring to the plan.

Objection overruled.

A. I think the City Auditor can verify those amounts better than I can.

Q. That is your telegram?

A. I signed it.

Q. And you received this wire?

A. Yes.

Mr. Thompson:

I offer in evidence the telegram dated October 24, 1938, and reply of Mr. Reddick, which he has just identified.

Mr. Jollay:

I object to introduction.

Objection sustained because you cannot offer evidence on cross examination.

138 Q. In answer to my inquiry as to how much money was used for operating expenses for the year, 1936, did you on October 24, 1938, advise me that that sum was $35,735.81?

Mr. Jollay:

I object. I don't see that it is material; there is nothing in the examination in chief and nothing in the petition.

Objection overruled.

A. I sent this telegram.

Q. On October 24th I wired you, did I not—"Please wire collect sums actually used for operating expense for years 1936 and 1937 respectively—also amount derived from fine fund"—you received that telegram from our office?

A. Of course any answer I make to a question would be assuming this was an identical copy and without records how could I say I received those exact words?

Q. Did you on October 24, 1938, send me a telegram saying this: Addressed to Phillips & Thompson, Clearwater—"$35,735.81 operating $882.95 from fines; $31,992.91 operating $714.50 from fines, 1936 and 1937 respectively to the best of my knowledge"—R. D. Reddick, City Clerk?

A. I cannot verify the words and cannot verify the date, but I did send a telegram similar.

Telegrams offered for purpose of identification and marked Exhibits #1 and #2.

Cross Examination.

By Mr. Crittenden:

Q. Mr. Reddick, do you know that Mr. Roger W. Babson obtained a peremptory writ of mandamus in 1937 ordering a levy to pay the balance of his judgment?

A. I know nothing of the basis of the 1937 system.

Q. You have no knowledge whatever of a writ having been obtained?

A. The assessment was on the rolls when I went in in 1938 and started collecting what was on the rolls.

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Q. Was there any levy on the 1937-8 roll of the City for the account of Roger W. Babson?

A. I could not say.

Q. You made no collections in 1938 for the account of Roger W. Babson from a levy made in 1937-8?

A. I made collections on 1937 rolls during 1938.

Q. Did you collect anything for the account of Roger W. Babson?

A. I collected taxes on the rolls.

Q. You cannot state that you collected money for Roger W. Babson's account?

A. If it was assessed for him, I collected it.

Q. Was the levy made on the 1938 roll for the account of Roger W. Babson?

A. No, as stated before, the levy was made under provisions of the plan.

Mr. Phillips:

Mr. Jollay agrees that if we submit satisfactory evidence between now and the next hearing of writs issued in any competent Court against the City of Avon Park in connection with these tax matters, he will admit such

proceedings in the record without the necessity of certified copies and will admit everything that has been done under them as shown by the records of the City and the proceedings in the several Courts.

D. F. CANFIELD, being first duly sworn on oath, testified on behalf of petitioner, as follows:

Examination.

Mr. Jollay:

Q. Mr. Canfield, will you state your name and place of residence?

A. D. F. Canfield, Avon Park.

140 Q. And your position?

A. Auditor and Comptroller of the City of Avon Park.

Q. How long have you held that position?

A. Since first of January, 1938.

Q. How long have you lived in Avon Park?

A. Going on 27 years.

Q. You have heard the testimony of Mr. Reddick regarding the plan of composition now before the Court and you have some knowledge of that plan and its adoption?

A. I have.

Q. Would you say that plan has been adopted by the City in good faith for the purpose of adjusting its indebtedness?

A. Yes, and I would further state that before it was accepted by the present administration, they called several meetings and one in particular, at which they called all citizens and discussed the matter because they were not familiar with the plan inasmuch as they just went in office. The old board perhaps knew all about it.

Q. It had been adopted by the old board previously?

A. Yes.

Q. What was the result of those meetings?

A. They decided finally, after having Mr. Lassiter down there, to accept the plan.

Q. Was there a good turn out of citizens?

A. As good as you could expect under the circumstances.

Q. And they felt satisfied?

A. Yes and they appointed a committee of citizens and taxpayers and they reported favorable.

Q. The plan was the work of a considerable period of time and a considerable number of persons?

A. From the first of January until finally
141 August, the resolution was passed, I believe.

Q. Mr. Canfield, you have lived in Avon Park a long time and I presume you have some knowledge of the general conditions of affairs in Avon Park for the last ten years or so.

A. I believe so.

Q. Would you mind stating to the Master a statement generally of economic conditions putting Avon Park in its present situation?

A. In the boom the bubble busted in 1926 and on top of that in 1929 every bank in our county except one at Lake Placid failed. Since that time matters have been growing worse if anything. We depend more or less on citrus. I have at the present time 800 boxes of tangerines out of 1000. 200 were picked and 800 are going on the ground. That is the present condition.

Q. Is there any bank in Avon Park now?

A. One, yes. Used to be two.

Q. Do you know about what the deposits in that bank are?

A. I believe they are only about 1/10th of what they were in '26.

Q. Which would be about how much?

A. $300,000 or $400,000—I think. I am not sure.

Q. How does the population of Avon Park compare with what it did in 1925 and 1926?

A. Not as much.

Q. Has the City of Avon Park been able to secure new industries or has it lost them?

A. Lost them.

Q. Do you know when they first defaulted in the payment of its bonded debt?

A. About 1929.

Q. Do you know about what it owed in 1929—the principal bonds, approximately?

A. Over a million dollars.

Q. About how much over a million dollars?

A. Possibly $100,000.

142 Q. About $1,100,000 when first defaulted and at this time its debt is about $865,000?

A. Yes.

Q. What became of the difference?

A. Most of it was used in settlement of taxes—bonds with bonds and coupons.

Q. And it has been paid off and canceled?

A. Yes.

Q. In other words, between 1929 and 1937 there was approximately $300,000 of the bonded debt of Avon Park paid off?

A. Something like that. Not the bond debt alone but with coupons—bonded debt and interest.

Q. Now, getting back to your particular duties, will you state to the Court what they are as City Auditor?

A. I keep a ledger and do all of the drawing, collect warrants, make up reports, comparisons, and such as that.

Q. Pay out all money paid out?

A. Pay out all money.

Q. Have you since you became City Auditor paid out any moneys to any of the judgments represented by these objecting creditors?

A. Yes.

Q. Do you know to whom?

A. Rittenoure and Babson. I don't know if I paid—

Q. I believed it was stated a while ago that counsel for Rittenoure had received nothing at all on the judgment. He said he had not, but you did—do you know how much you paid?

A. $1400.00, I believe. I know there was one item.

Q. And you paid Mr. Babson?

A. Yes.

Q. And those amounts were the proceeds of
143 levies made under writs of mandamus?

A. Yes, previous to 1937.

Q. You stated a while ago that the population of the City is about 3500, or Mr. Reddick stated—is that about right?

A. Approximately.

Q. Do you know the proportion of colored and white?

A. I should judge there are about 600 colored.

Q. Has the City of Avon Park any other sources of revenue out of which to pay its debts than ad valorem taxes and fines and forfeitures?

A. Licenses, minor building permits, such as that. Miscellaneous. They also sell real estate. They have foreclosures.

Q. What do you do with proceeds of the real estate that you sell?

A. All put in a general fund.

Q. The City does own a considerable amount of real estate though?

A. I should imagine at least 10% of the town.

Q. That has been acquired through foreclosures in an attempt to collect taxes?

A. Yes.

Q. Do you know whether or not any considerable campaigns to collect taxes have been put on by the City in the last four or five years since they became in default?

A. I think those foreclosures were started in 1933, I believe it was the first, and continued up to the last one, which I believe was January, 1938.

Q. So during that period of time the City in an attempt to collect taxes not only collected some but took over approximately 10% of the town?

A. Yes, sir.

Examination.

By Special Master:

Q. Do you know about what the annual cost of operating the City of Avon Park is, including all necessary expenses?

A. About $30,000.

144 Q. About $30,000 a year to operate the City?

A. Yes.

Cross Examination.

By Mr. Patterson:

Q. You say Mr. Lassiter came down—is that—

A. Representative of Mr. Crummer.

Q. They prepared the plan, did they?

A. The plan was prepared before I knew about it. I presume they did.

Q. Who brought it to the City?

A. Mr. Lassiter.

Q. And you spoke of the City Commission considering the plan.

A. The present City Commission knew nothing whatever about the plan and they wanted a full explanation.

Q. Did Mr. Crummer explain to the City Commission that he owned 200 or 300 of the bonds of the City?

A. Not that I know of.

Q. Has he advised the City that he owns these judgments and if so, when?

A. I don't know. Not to my knowledge.

Q. You don't know whether he owned these before or since the plan was adopted?

A. No.

Mr. Jollay:

I object to questions.

Objection sustained.

Cross Examination.

By Mr. Crittenden:

Q. Mr. Cranfield, you testified about $300,000 has been taken in in bonds and coupons. In collecting these taxes from 1933 on, were any of those bonds applied against debt service taxes?

A. That I really could not tell. It was before
145 I ever took office. No bonds have been collected since I took office. We put a stop to that right now.

Q. The only thing you know is that some $300,000 of the indebtedness has been retired by bonds?

A. Yes.

Q. You are auditor and you say you keep the ledger, etc., of the City. What do records show with reference to the acceptance of bonds and retirement of taxes? You have checked those accounts have you not?

A. There has been an audit made by an Auditor. I don't get the drift of your question.

Q. Do you know of your own knowledge whether bonds and coupons were accepted and applied against debt service taxes?

A. I believe they were, yes, by the former administration.

Q. Were they applied indiscriminately against all taxes levied from 1933 on?

A. From 1935.

Cross Examination.

By Mr. Phillips:

Q. You say you paid us $1400 this year for Rittenoure?

A. Not this year.

Q. It was in 1937, wasn't it?

A. I believe it was.

Q. That was on the old writ?

A. Yes.

Q. On what basis was that $300,000 that you spoke of taken in—cash payment?

A. That was taken in by Mr. Pardee who was
146 Attorney and had the collection of delinquent taxes during his term of office as Attorney.

Q. He is the man that would know about that?

A. Yes.

Q. It wasn't cash was it?

A. Some cash.

Q. What is the name of the bank there?

A. Barnett State Bank. There is a little explanation I would like to give which would clarify some matters. Reference has been made to the $206,696.79. At the time that property was foreclosed it was written off of the uncollected amounts of the years to which it applied, way back to 1916, and that $206,696.79 has no relation to the presene schedule of uncollected taxes—it is not included. They were written off. There is another thing about that 1936 tax that ought to be cleared. In 1936 the regular roll was gotten up in time for collection—in, I presume, October or September, 1936. Then in March, 1937, some of these gentlemen, I presume, were familiar—they went in Federal Court and got a mandamus to require a levy

of 34 mills. Before that could be put on the roll, the majority of people had already paid their taxes and that is why that one year that an operating tax was collected, without a portion for debt service in 1936. If a man comes in and says he wants to pay his operating tax for 1936 and the Clerk takes it and shows it on the receipt—and if a man comes and wants to pay his bonds, the Clerk takes it and that is the only way that is done. If a man comes to pay 1938 operating, the Clerk takes it, but that is all. It is all on one roll.

Cross Examination.

By Mr. Patterson:

Q. I understand that the 1938 levy was made for what purpose—for the plan?

A. Yes.

Q. Made for bonds that have not been issued?

A. Yes.

147 Re-Direct Examination.

By Mr. Jollay:

Q. Mr. Canfield, you stated a while ago you are familiar with this plan of composition and the refunding contract between the City of Avon Park and R. E. Crummer and Company. Is the City of Avon Park paying R. E. Crummer & Company or any other person any compensation in connection with this matter other than that disclosed in the plan?

A. They have not at the present time and do not contemplate doing so.

Q. They have not made any secret arrangements to pay anything other than in the plan?

A. Not that I know.

Q. Under the plan the costs are to be borne by R. E. Crummer & Company?

A. Yes.

Q. And they are to reimburse themselves according to the plan?

A. Yes.

Q. And there are no other arrangements or agreements?

A. Not that I know of.

Examination.

By Special Master:

Q. Is the City to pay out anything at all in connection with the compensation?

A. Not one cent.

T. A. McNICHOLAS, being first duly sworn on oath, testified on behalf of Petitioner, as follows:

Examination.

By Mr. Dollay:

Q. Mr. McNicholas, state your name and address.

A. T. A. McNicholas, Avon Park, Florida.

Q. What is your position, if any, with the
148 City?

A. City Attorney.

Q. How long have you been City Attorney?

A. Since January, 1938.

Q. Mr. McNicholas, under the City's petition here the allegation is made that the town of Avon Park was organized in 1913 and included about 3 square miles and it issued certain bonds which are described in Paragraph 3 of the Petition, total amount of which is now outstanding, $362,500. Have you examined that Charter of the City under the original act and determined whether or not, in your opinion, those bonds are general obligations of the original town?

A. They are general obligations.

Q. And the town of Avon Park as it then existed and successor cities have unlimited power to tax for the payment of these debts?

A. Yes, sir.

Q. Afterwards, in 1925, was there another Act passed enlarging the town?

A. Yes, sir.

Q. That was Chapter 10,320, Acts of 1925?

A. Yes, sir. That took in 36 square miles of territory.

Q. Including the three originally in the town?

A. Yes.

Q. In other words, a whole township?

A. Whole Township—No. 33.

Q. After that Act went into effect, did the town of Avon Park issue other bonds?

A. Yes.

Q. In our petition we alleged that there is $505,000 of bonds outstanding after this Act went in effect—is that correct?

A. That is about correct.

149 Q. Did that Act make any exception as to the payment of the bonds issued after it went into effect?

A. I don't know—the Act would speak for itself. It is my recollection that it provides that the status of bonds then outstanding should not be affected by the Act—the property would remain and continue liable.

Q. The added territory was not made liable for the original bonds of Avon Park?

A. That is correct.

Q. Was the power granted the City of Avon Park to levy an unlimited millage for bonds issued pursuant to this provision?

A. Yes.

Q. You know something about this quo warranto litigation?

A. Yes.

Q. Would you mind stating the status?

A. It was a suit brought some eight years ago by grove owners, outside property owners, and it has been footballed in and out of the Supreme Court, backwards and forwards for years, and some four or five years ago the Supreme Court issued an order appointing Judge Barker, our Circuit Court Judge, to take the testimony and directed that he take and file it within ninety days. Nothing has been done. Some testimony has been taken. Mr. Edwin Walker who represented main Complainants in that suit, since died and whoever has succeeded him, I don't know definitely,—but the main objector was the Pittsburgh Florida Fruit Growers people and Mr. Jesse Wilson at Bartow was supposed to succeed him and Mr. Wilson has been sick and nothing has been done, except I have settled with every Complainant in that suit except two.

Q. Has there ever been a writ actually excluding the territory from Avon Park?

A. No, it was done by legislation—passed a
150 new Act—and it was never done under writ of Court.

R. D. REDDICK, having previously been sworn, under oath, testified further, as follows:

Examination.

By Mr. Jollay:

Q. I am recalling Mr. Reddick for the purpose of clarifying the amount of past due interest on outstanding bonds accrued to July 1, 1937, which was testified to this morning as being $326,802. Now, Mr. Reddick, since you testified this morning have you made a further examination of the figures as disclosed by the modified plan compared with the bond record?

A. I have.

Q. Have you talked also with the Auditor who prepared the figures in the plan?

A. I have.

Q. After this examination—after talking to the Auditor—what do you find to be the actual state of the facts as regards those figures?

A. I find that the discrepancy according to 5/1/25 bonds issued 1925 was a transposition and my discrepancy should apply to 5/1/25 improvement bonds.

Q. What was the amount transposed from May 1, 1925, improvement bonds to May 1, 1925, refunding bonds?

A. $11,550.

Q. And that error arose how?

A. By a transposition in the bonds of the same date, reverting back to legal descriptions.

Q. Were any of those coupons included in the judgment?

A. They were.

Q. And how were they described in the judgment?

A. The description in the judgment was
151 5/1/25 refunding bonds, numbered above 40.

Q. And there were no refunding bonds numbered above 40?

A. Correct.

Q. And the coupons were actually clipped from the 5/1/25 improvement bonds?

A. Correct—it must have been.

Q. It must have been because there was no numbers of bonds in the other issue as described?

A. None above 40 in the refunding bonds out—improvement bonds go above.

Q. Does that mistake make any difference in the final amount due on interest?

A. It does not.

Q. What is that final amount due as of July 1, 1937?
A. The final amount?
Q. That is the grand total.
A. According to the plan, $358,251.76.
Q. That is the same figure shown in the plan?
A. Same figure.

Examination.

By Special Master:
Q. Is that figure as shown in the plan and testified to by you the correct total, in your judgment?
A. In my opinion, yes, sir.

By agreement of counsel the hearing is adjourned to Wednesday, March 22, 1939, at ten-thirty in the forenoon, in the Assembly Room, Third Floor of the Court House, in Orlando, Florida.

152 Continuation of the hearing before the Special Master was held on Wednesday, March 22, 1939, at ten-thirty in the forenoon, in the Assembly Room, Third Floor of the Court House, Orlando, Florida, with following appearances:

Allen E. Walker, Special Master.

Henry L. Jollay and T. A. McNicholas, Attorneys for Petitioner, City of Avon Park, Florida.

D. F. Canfield, Auditor of the City of Avon Park, Florida.

W. John Phillips and Harry L. Thompson, of the firm of Phillips & Thompson, Attorneys, representing Lawrence W. Rittenoure.

H. C. Crittenden, Attorney, representing Roger W. Babson.

Giles J. Patterson, Attorney, representing William E. Sweet and United Mutual Life Insurance Company.

A. McKee Elwell, member of City Council of Avon Park, Florida.

E. W. Hartt, President of City Council.

F. W. Shockley, a former City Clerk and Tax Collector of Avon Park, Florida.

H. A. Lassiter, Vice-President of R. E. Crummer & Company, fiscal agent.

Robert Pleus, Attorney for R. E. Crummer & Company, fiscal agent.

Mr. Thompson:

With reference to Claim #60 filed on behalf of Lawrence W. Rittenoure, I find the date of the notes described in said proof is in error and should be December 1, 1927 instead of December 1, 1929, which is the due date, and ask leave to correct same.

Granted by Special Master and claim corrected.

Mr. Jollay:

At this time I wish to supply the original assignments in connection with claims of R. E. Crummer & Company and Brown-Crummer Investment Company, which are to be attached to said claims and ask leave to withdraw the original assignments and substitute copies therefor.

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Mr. Patterson:

Counsel for the City states that the assignments of judgments offered are not for the purpose of proving judgments but for the purpose of proving the securities upon which the judgments are based in conformity with the plan of composition.

Assignments received and attached to the claim and leave granted to withdraw the original assignments and substitute copies therefor.

Mr. Patterson:

We object to the proof of the judgments with the assignments unless made the basis of the claim. We do not see it is material in the case, in view of the statement made by Counsel that he is not attempting to prove them as a claim.

Objection overruled.

Objecting creditors waive cross examination of Mr. T. A. McNicholas.

Petitioner rests and Petitioner has produced and has available Mr. A. McKee Elwell, a member of the City Council, Mr. E. W. Hartt, President of the City Council, Mr. F. W. Shockley, former Clerk of the City of Avon Park, and Mr. H. A. Lassiter of R. E. Crummer & Company, in accordance with instructions.

Testimony on Behalf of Lawrence W. Rittenoure, William E. Sweet, American United Life Insurance Company and Roger W. Babson, Objecting Creditors.

A. McKEE ELWELL, being first duly sworn, on oath testified as follows:

154 Examination.

By Mr. Patterson:

Q. What is your name?
A. A. McKee Elwell.
Q. You live in Avon Park?
A. Yes, sir.
Q. What position do you hold with the City?
A. Member of City Council.
Q. How long have you been on the Council?
A. A year and three months.
Q. That is since January, 1938?
A. Yes, sir.
Q. Did you hold any position prior to that time?
A. No, sir.
Q. What business are you in?
A. I am office manager for Mandis Dairy.
Q. Where is that?
A. In Avon Park.
Q. What do you know about this plan? Do you have any special information with reference to the tax situation in Avon Park?
A. Only as a member of the City Council—we have studied that refunding agreement very thoroughly.
Q. You were not a member of the City Council when it was first adopted by the Council?
A. No, sir.
Q. And you were a member when it was re-examined in 1938?
A. Yes, sir.
Q. Mr. Canfield stated at the last hearing that the plan was presented to the Council by a representative of the Crummer Company. Do you remember that?
A. Yes, sir.

Q. You were present?

A. Yes, sir.

Q. It had not been adopted prior to that?

155 A. It had been adopted by the previous Council.

Q. What was the purpose of having a representative from the Crummer Company?

A. We had just been in office possibly ten days or so and the hearings to validate the bonds were scheduled for possibly a week and as a new Council we were not thoroughly familiar with the refunding program, so we asked for an extension until we had a chance to study it and had a representative of Crummer speak to the Council and also to a number of citizens and at the same time we had some copies of the agreement multigraphed, possibly 40 or 50, and distributed them among larger taxpayers, prominent citizens and real estate men and requested that they study it and later we had a hearing of this commission and the concensus of opinion was that they should go ahead with it.

Q. Previous to that time, did you have any knowledge much of the general plan?

A. No, sir. I had never taken any interest in it before being elected.

Q. Then the Council, as I understand, authorized them to proceed under the plan?

A. Yes, sir.

Q. You know the plan has been amended since the petition was filed?

A. We were furnished with a copy of amendments, revisions or corrections. I know there have been some changes made.

Q. Do you know what the changes are?

A. Yes, sir.

Q. What are they?

A. As I recall it, they set forth the manner in which the First National Bank of Chicago should act as ex-

change agent and exchange the bonds and manner of setting up the sinking fund and millage which should be levied against the various territories within the City. There was no change, as I recall it, in the interest on coupons.

Q. What was the change on interest?

156 A. There was no change.

Q. You don't recall any meeting of the City Council when they made any change in the plan of refunding after the meeting to which you referred a while ago? Do you remember any meeting within the last few months where the plan was changed?

A. We had a special meeting, possibly a month or six weeks ago in which this revised, corrected plan was presented and the City passed a resolution favoring it, approving it.

Q. And what you have stated as changes is substantially your understanding of the changes?

A. The various changes which we checked against the old plan—there was nothing outstanding in the way of changes.

Q. Who submitted that proposed change?

A. It was submitted by Crummer & Company.

Q. Prepared by them and submitted to the City Council?

A. I suppose so.

Q. Who is the attorney for the City of Avon Park?

A. Mr. T. A. McNicholas.

F. W. SHOCKLEY, being first duly sworn on oath, testified as follows:

Examination.

By Mr. Patterson:

Q. What are your initials, Mr. Shockley?

A. F. W.

Q. You live in Avon Park?

A. Yes, sir.

Q. How long have you lived there?

157 A. Practically all my life.

Q. Have you ever occupied any position with the City of Avon Park?

A. Yes, sir.

Q. What position?

A. I was City Clerk and Tax Collector.

Q. For how long?

A. From January, 1932, to December, 1938.

Q. You were Tax Collector then and City Clerk when the City adopted the resolution authorizing the acceptance of this plan of refunding in July of 1937?

A. Will you state that again?

Q. You were Clerk when they approved this plan in July, 1937?

A. Yes, sir.

Q. And it was your duty to keep records and collect taxes of the City at that time?

A. Yes, sir.

Q. What, if anything, did you have to do with making up tax levies while you were in office—what were your duties?

A. As City Clerk, I prepared budget estimates and presented them to the Council for their consideration.

Q. And entered those on the minutes, I suppose, or made records—whatever records were required?

A. Yes, sir.

Q. Did you make up tax books and rolls?

A. No, sir.

Q. Who made up tax rolls?

A. City Tax Assessor.

Q. There was a Tax Assessor?

A. Yes, sir.

Q. You did instruct the Tax Assessor as to levies that were made or furnish him copies of your records?

A. I furnished him copies of our records, yes, sir.

Q. As to millages to be levied for different
158 propositions?

A. Yes, sir.

Q. If a suit was entered against the City of Avon Park, was service made on you or what officer?

A. I believe it was usually made upon the members of the City Council and other City officials.

Q. Was it made on you at the same time?

A. I believe it usually was, yes, sir.

Q. Do you recall whether or not there were certain suits entered against the City of Avon Park resulting in judgments along in 1935 or 1936?

A. I do.

Q. Do you recall whether or not on any of those judgments writs of mandamus were issued out of Federal Court requiring levies?

A. In certain cases I believe there were.

Q. Do you know whether there were any levies made for those judgments?

A. Yes, sir. There were levies made.

Q. What year?

A. I am not absolutely certain of years.

Q. What is the best of your recollection?

A. Two or three years.

Q. When does your fiscal year begin?

A. October 1st.

Q. And you pass your resolution for your tax levies shortly previous to that?

A. It is customary, I believe, to pass it during the month of October.

Q. So the levy for 1937, we will say, would have been made in Septemeber or October of 1936?

A. No, sir.

Q. What year?

A. The 1937 tax levy would probably be made in October of 1937.

Q. And you were City Clerk at that time?

159 A. Yes, sir.

Q. Was any tax levy made that year for any judgments against the town of Avon Park?

A. I believe that there was a levy. I am not sure.

Q. You don't remember?

A. I am not positive, no, sir.

Q. Do you recall whether or not there was a levy made in response to a writ of mandamus brought by Gillespie and others for 1937? Meredith, Gillespie and Rogers?

A. Will you advise me the location of that concern?

Q. All I know was three individual names given.

A. I remember a W. J. Meredith. I think that was the name of one of the parties bringing the suit.

Q. You don't know whether there was a tax levy made for that suit?

A. I think there was.

Q. And you think there was a levy made for other creditors at the same time?

A. I don't remember.

Q. Do you recall, Mr. Shockley, whether or not the City officials so far as you know, took any active steps under the resolution of July, 1937, before you went out of office? That resolution is the one adopting this plan and contract with the Crummer Company.

A. They adopted the resolution and as I remember it, they promised the Crummer Company to co-operate with them in every way they could to effect a refunding agreement.

Q. That is about all the City officials did before January, 1938?

A. Practically speaking, yes, sir.

Q. In other words, as I understand it, this contract of the City left the carrying out of the plan largely to R. E. Crummer & Company?

A. They were appointed their agents in the
160 refunding.

Q. Coming back to that levy of 1937, I don't want to mix you up—I want certain facts in the record. Do you recall the amount of that levy or how it was divided for this proposition? If you don't, just say so, as the records will show.

A. I really don't, sir. I don't remember the amount.

Q. You did not remember the 1936 any more than you did 1937?

A. No, it is my impression that in the year 1936 there were levies for about six or seven different judgment creditors.

Q. But you don't remember that about the 1937 levy?

A. I am not positive about it, no, sir.

Examination.

By Mr. Thompson:

Q. Mr. Shockley, in your office you became familiar with all the different volumes that these assessments were in?

A. Yes, sir.

Q. Do you remember one book, size about 14x18 and about one-half inch thick, in which one levy was made for one creditor—debt service of W. J. Meredith?

A. I remember such a book and that that book had only debt service in it.

Q. And there was only one creditor levied for in that book?

A. I cannot say positively there was only one creditor levied in that book. Our records would not have been made up in that fashion. Whatever debt service levy was made would have been in that book, regardless of one creditor or a dozen.

Q. Are you sure there were not ony other debt service levies made for that year? Isn't it true the only

debt service levy made was that of W. J. Meredith, Highlands County, Mandamus?

A. I am not positive of that point.

161 Q. You don't remember any other?

A. That is the year 1937?

Q. I think 1936.

A. Would you tell me just which year it was now?

Q. Wasn't there one for 1936?

A. As I believe I stated before, I think in 1936 we levied for several judgment creditors.

Q. Was there one like that for 1937?

A. And in 1937, I am sure we again levied for judgment creditors, but I am not certain as to how many we levied for.

Q. You don't remember any judgment creditor except Meredith?

A. I think he was in that levy, yes, sir.

Q. You don't remember any other?

A. No, I don't remember the amount of the levy so I could not tell you on that.

Examination.

By Mr. Crittenden:

Q. Mr. Shockley, do you recall a writ of mandamus issued out of Federal Court in March, 1937, for Roger W. Babson, ordering a levy for the fiscal year then ensuing on the 1936-37 fiscal year—an order to spread a levy thereafter?

A. I don't believe I understand your question.

Q. Do you recall a writ of mandamus issuing out of Federal Court in 1937 commanding a levy for the account of Roger W. Babson?

A. No, sir. I do not.

Q. You don't recall it?

A. No, sir.

Examination.

By Mr. Phillips:

Q. Mr. Shockley, while City Clerk, isn't it a fact you followed the custom of dividing your levies into two categories, one for debt service and one for operating expense?

A. Yes, sir.

Q. And you permitted the taxpayers to pay
162 one or the other as they saw fit?

A. I believe that occurred in one year only, but I am not positive what year it was. I think the ordinance of levy provided the conditions under which they could pay either debt service or operating or both.

Q. In that year, practically nothing was paid for debt service—isn't that correct?

A. I don't remember what year it was, but I remember there was one year during the time I was City Clerk and Tax Collector in which such provision was made.

Q. Isn't it true that practically all funds collected for debt service were diverted or used for operating service?

A. No, sir.

Q. What was done with those funds?

A. They were applied to bonds and interest coupons—judgments.

Q. What was your answer?

A. My answer was that those moneys were used to buy bonds and coupons and apply on judgments.

Q. And among those moneys were certain funds specifically earmarked for certain writs of mandamus?

A. In certain years I believe there were.

Q. You ignored writs of Federal Court and State Courts also and used the money as you saw fit?

A. No, sir.

Q. During all the time you were City Clerk, there were mandamus suits outstanding against you on behalf

of Lawrence W. Rittenoure in State Court and Federal Court?

A. I remember you had a judgment against the City.

Q. And you remember writs were outstanding also—writs of mandamus requiring them to make levies and pay the judgments?

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A. Yes, sir.

Q. Did you levy?

A. I believe we did.

Q. Don't you know?

A. We paid all moneys collected on Mr. Rittenoure's writs over to his attorneys.

Q. You did not divert any of those to operating expense?

A. No, sir.

H. A. LASSITER, being first duly sworn, on oath testified as follows:

Examination.

By Mr. Patterson:

Q. Mr. Lassiter, who are you connected with?

A. R. E. Crummer and Company.

Q. How long have you been connected with that company?

A. That company since April, 1934; its predecessor since June, 1930.

Q. Who was its predecessor?

A. Brown-Crummer Company.

Q. Who is Brown-Crummer Investment Company?

A. A firm of investment bankers of Wichita, Kansas.

Q. The same Mr. Crummer?

A. Yes, sir.

Q. He is still connected with Brown-Crummer?

A. Yes.

Q. Is he President of it?

A. Yes.

Q. The R. E. Crummer Company was employed by contract with the City of Avon Park to effect a refunding of its bonded indebtedness—is that correct?

A. Correct.

164 Q. That was embodied in the resolution adopted by the Council, July, 1937?

A. I believe that is the correct date.

Q. Is the present contract the same as the contract which was set out in that resolution or have there been any changes?

A. There have been no modifications in the contract.

Q. Do you remember the date of the contract? Is it the date of the resolution or is the contract dated subsequently?

A. I believe it is the same date. It usually is. The resolution sets forth the contract.

Q. Under that contract what were the duties of R. E. Crummer & Company, briefly speaking?

A. It was the duty of R. E. Crummer & Company to attempt to complete a refunding of the indebtedness of Avon Park within the mills set forth in the contract, including performing all technical services that had to be performed, in order to accomplish those results and presenting the plan to bondholders and making exchanges.

Q. That is summarized in Section 7 in the printed circular called a "Refunding Plan" of the City of Avon Park, dated April 23, 1938?

A. Generally, yes.

Q. Under that R. E. Crummer & Company was to assemble bonds to be refunded; print refunding bonds; represent the City in legal proceedings to validate said refunding bonds; obtain approving opinion of nationally recognized bond counsel upon the issuance and validation of said bonds, said counsel to be selected by said R. E. Crummer & Company; pay all other expenses in

connection with the refunding which may be approved by R. E. Crummer & Company; and also indemnify the City for costs to employ Counsel to represent it in the refunding plan?

A. Correct.

165 Q. Mr. Jollay was the Counsel employed to represent the City of Avon Park in the refunding proceedings?

A. In the bankruptcy matter.

Q. He was selected by R. E. Crummer & Company?

A. That is right.

Q. And has represented R. E. Crummer & Company in other cases?

A. Oh, yes.

Q. After this contract was made in July, 1937, did you proceed then to try to get consents of various bondholders to the plan?

A. As soon as the details were in position where we could set forth the plan to the bondholders. I recall that it was several months before that was done. It may have been late in summer or early fall before the plan was presented to the public.

Q. This printed slip I have here is dated April 23, 1938. Was there any general communication sent to bondholders before, say, February, 1938?

A. I don't remember the exact date, but it was well before that.

Q. The reason I ask was that Mrs. Elwell testified the new Council came in office January, 1938, and the City Council reconsidered the matter at that time. My question was whether or not you proceeded after the first contract or whether you waited until after February, 1938, before you became active?

A. Perhaps if you will permit it, if I would outline what we did, it would save questions. As soon as the contract was signed our clerical force immediately began assembling information that is necessary in order to pre-

sent any plan to the public, except in a more or less correspondence form—something that a bondholder can definitely say "yes" or "no" to. We immediately
166 made a survey of the outstanding debt which proved to be quite difficult because of the fact that we had considerable difficulty in locating the records of the original bond issues. When that information was assembed and the bond registers eventually balanced and we knew what was out and what was not out, a set of resolutions and companion papers was prepared authorizing the issuance of refunding bonds. Those resolutions disposed, to the best of our ability, of the complicated problem occasioned by the fact that the City had three tax zones. I remember considerable discussions and correspondence and I believe, personal visits, with the approving attorneys agreeing upon the method in which that could be handled satisfactorily—or to their satisfaction, and in a way we thought the Court would approve when those facts were known and as soon as they were known, we prepared a printed plan covering the refunding. It was not the plan of composition that you have there—it was an original prospectus of the refunding plan realized, without any idea that bankruptcy action would be necessary.

Q. About what time was that done, approximately?

A. Officially I would say October or November, 1937.

Q. It was a preliminary printed slip sent out?

A. Yes, and during the same period the papers authorizing the issuance of the refunding bonds were completed, submitted to the City Council, adopted by the City Council and the petition to validate the refunding bonds was filed. I believe that was in December of 1937, and allowing for the statutory period of notice, it was returnable to the last week in December or first week of January, 1938, and that is the period mentioned by Mr. Elwell. In the meantime the City government had changed and a new City Attorney came in and be-

fore the City felt disposed to proceed, they wanted to view the entire picture and that is when the conference took place in 1938, but so far as the bondholders themselves were concerned, the plan had been adopted.

Q. This information you gathered in respect
167 to bonds, etc., was after July, 1937?

A. Oh, yes.

Q. Didn't the original resolution provide in a general way for that?

A. It just stated the approximate debt outstanding.

Q. In other words, these figures and terms of refunding in the original resolution are not correct?

A. There were certain technical revisions; for instance, definitions of the bonds and possibly in amounts outstanding, to some small degree.

Q. But the general provisions of that contract have not been changed?

A. Oh, no.

Q. And before that time you had acquired this information subject to certain changes and corrections?

A. That is not true, Mr. Patterson.

Q. I am judging by information from the contract.

A. In the form it is there it can be obtained by the last audit of the City and you will find those figures were taken from the last audit of the City.

Q. It is subject to corrections and other information but the plan of the refunding, bond maturities and interest rates and details were set out in the contract of July, 1937?

A. Yes.

Q. And those are substantially in effect today?

A. That is right.

Q. The only difference, as I understand, is in the amounts of particular issues or variations in taxing districts?

A. That is right.

Q. Then, as I understand, all these services you performed were substantially completed, possibly with the exception of validation proceedings, before the meeting of the City Council?

A. Well, I would say that is far from true.

168 Q. Substantially?

A. Substantially is a matter of opinion.

Q. I don't mean to misrepresent. I understand getting this information (I assume other information came afterward), but getting information and getting up your plan for the refunding and drawing your resolutions and starting your validation proceedings and printing of bonds—all was completed along about January or February, 1938?

A. I beleieve that is substantially true.

Q. And the only question at that time was the question of final decree on the validation which was not complete?

A. Yes, sir.

Q. And that was all handled by your office under contract?

A. Yes.

Q. And your attorneys, of course, handled the validation proceedings?

A. They prepared papers and they were submitted to, examined by and approved by the Attorney for the City and the Council itself.

Q. This list of creditors attached to the petition as to ownership of bonds and coupons was the result of your investigations and efforts?

A. Yes, and they represent substantial services in trying to locate bondholders.

Q. And to those creditors you then submitted the printed plan of April, 1938?

A. This was sent to all those holders.

Q. Now, Mr. Lassiter, just in order to get the record clear, let's briefly review the plan. If you want to

answer, state it, and if I am wrong, you correct me. My understanding is that this plan is predicated upon
169 the list of bonds shown in this printed slip. Are there any changes in these amounts?

A. I think there have been some minor changes.

Q. I am not trying to mix you up, but those are the bonds and securities that are to be refunded under this proposed plan?

A. Yes.

Q. You do not include in there $25,000 of notes of the City owned by Rittenoure—they are not included in the plan?

A. No, sir.

Q. Do you know whether or not those have been reduced to judgment?

A. I do.

Q. Do you know about the date of the judgment?

A. I should say at least three or four years old.

Q. Was it before this plan was made up?

A. Yes, sir.

Q. Why were those omitted?

A. Well, there are several reasons why they were omitted. So far as I personally was concerned, I was not aware they had been omitted until last week when it was called to my attention following the hearing in Winter Haven. The reason it was eliminated is still a very sound reason and that is—

Q. This is not your reason?

A. So far as I personally am concerned, the reason it was eliminated by the office, in which I thoroughly concur, is that the notes issued were not subject to refunding by the type of bonds proposed to be issued.

Q. Those notes were in judgment?

A. They were.

Q. And there has been no appeal?

A. No, but they were apparently not a bonded
170 obligation and the people in Avon Park in 1929 or 1930 had voted against issuing bonds to re-

fund those notes and therefore, we did not believe it was possible to convert those notes into bonds contrary to the vote of the people of Avon Park.

Q. On page 11 of the petition is a list of judgment creditors and among them is listed two creditors I represent: American United Life and Mr. Sweet. Some of these judgments were entered in Federal Court and some in the State Court?

A. Yes, sir.

Q. You are more or less familiar with the names of them?

A. Yes, I am.

Q. Now, from the testimony offered here, a great many of those judgments have been purchased by either Crummer Company or Brown-Crummer. Which is it?

A. Either one. Some own one and some the other.

Q. The Rittenoure judgment was not purchased?

A. No, sir.

Q. The two represented by me have not been purchased?

A. No.

Q. Some of those judgments were purchased after you made your contract with the City, were they not?

A. Oh, yes.

Q. Now, the exhibit which you have attached, shows the ownership of a great many bonds and coupons by the Brown-Crummer Company and a great many owned by R. E. Crummer & Company that are not represented by judgments?

A. That is correct.

Q. Were they any substantial portion of those bonds owned prior to July, 1937?

A. Oh, yes. I should say that outside of these judgments, and even as to a substantial portion of the judgments, they were owned prior to execution of the contract.

Q. My question was directed to bonds par-
171 ticularly.

A. Yes, they were.

Q. A good many of those bonds listed and proved here in addition to judgments were purchased after the contract?

A. Not the bonds.

Q. You did not purchase any bonds?

A. I would not say none, but a very conservative estimate, not over 508% of bonds and coupons were purchased subsequent to the date of the execution of the contract.

Q. Have you purchased any coupons since your contract, separate from bonds?

A. I don't believe so. I don't recall any.

Q. And in buying any bonds since default of the town I suppose all bonds have been bought flat with coupons attached?

A. Most of them, I would say.

Q. So that the price of the coupons is really absorbed in the price of the bonds?

A. That is right.

Q. And all purchases since the town has been in default were purchased at less than par?

A. Naturally so.

Q. So coupons then would cost nothing when they purchased them unless you allocated a portion of the price of the bonds to the coupons?

A. That is correct except the statement is misleading, in that the bonds were purchased at certain prices for bonds plus so much for the coupons attached. There was an allowance made for coupons attached.

Q. So there was an allowance for coupons attached?

A. Yes, sir.

Q. Now, Mr. Lassiter, can you state whether any of these judgments on bonds were bought after bankruptcy proceedings were filed?

A. I don't believe any of them were. I won't state it as a positive fact, but I don't believe they were.

Q. Now, these creditors whose claims have
172 been prepared and filed and consents, did your office get most of those consents?

A. Only by the returns from the release of the plan and consents that came back to our Chicago office.

Q. You did not interview them personally?

A. Some of them were interviewed. Most of them had been interviewed under the original plan and this being merely a move to complete the original plan, by comparison, there was no particular need of it.

Q. Under Section 8 of the printed plan a charge of $20.00 a bond was made against each bondholder for the portion of the expense of carrying out the plan?

A. Yes.

Q. Can you state whether or not you know any of these creditors who have consented had that $20 remitted in order to get their consent?

A. I am positive none of them have.

Q. In other words, you testify positively all consents that are here are bound to pay the full amount agreed to in the plan?

A. Yes, sir.

Q. That also contemplates they will carry out the further provisions about the issuance of refunding bonds for interest, which are to be turned over to Crummer Company?

A. That is right.

Q. Now, the plan was altered within the last few months?

A. That is right.

Q. What was the effect of that change in a practical way on the original plan?

A. It only gave bondholders an added advantage, if they elected.

Q. Answer this way. Under the original plan, what was the provision with reference to the bondholders which was changed?

A. Under the original provisions the bond-
173 holder paid a charge of $20.00 per bond for exchange of his bonds for refunding bonds and delivered interest coupons to R. E. Crummer & Company upon the payment of 33-1/3 of the face amount thereof.

Q. He was required, under the plan, to deliver his coupons to Crummer & Company for 2%?

A. Yes.

Q. To July 1, 1937?

A. Yes.

Q. And pay $20.00 a bond?

A. That is correct.

Q. That has been changed and what is the present provision?

A. The present provision is that the interest coupons are placed in escrow in the First Nartional Bank of Chicago, or any other bank nominated by the Judge; the escrow to run for a period of two years and the bondholder is issued in lieu thereof a certificate of the First National Bank of Chicago evidencing the par amount of his interest claim. During the first six months after the issuance of that certificate the City collects certain funds and remits those funds to the First National Bank of Chicago and buys those claims at 50¢ on the dollar. For the next six months the funds are used to liquidate claims at 60¢ on the dollar; for the next six months to liqudiate them at 70¢; and the next six months, 75¢; but those funds are only remitted to the escrow agent if the City is unable to use those funds for the purchase of refunding bonds in circulation, at prices less than prices in this escrow.

Q. That was not in the original plan?

A. The companion features were in the original. This provision is inserted to put in legal form the plans that

had been contemplated in the original prospectus by voluntary consent, that is, that these items were to be made available to the City at an agreed price if the
174 City could raise the money and in the original it was their obligation to deliver to the City at agreed figures, as I recall.

Q. What was the approximate amount of the issue other than amount of coupons outstanding, which under the terms of the original agreement would have been refunded in interested bonds?

A. I believe the figure is stated at $358,000.

Q. And under the original plan there were about 800 and how many bonds?

A. Principal debt?

Q. Yes, approximately—

A. $865,000.

Q. And of that, Crummer interests owned about $300,000. There would be about $550,000 of bonds held by other persons who would pay $20.00 per head as part of the expense?

A. Accepting your figure as to the ownership of the Crummer interest—I don't have those figures.

Q. All that weren't owned by Crummer paid $20.00 a bond?

A. That is right.

Q. In addition to that, Crummer would proceed with $300,000 of bonds for which they would have paid to the other bondholders 2% in lieu of the 6% interest coupons?

A. Correct.

Q. So that the face value of the refunding bonds then would be worth $337,000 and would have cost Crummer approximately $110,000?

A. Approximately one-third of that figure.

Q. A paper profit, assuming the bonds are worth par?

A. So long as you use the word "paper" I will agree.

Q. Under the revised plan those interest refunding bonds of $337,000 will go to persons who own coupons if they so desire?

A. Yes.

175 Q. And they will all share alike in the moneys which are received by the Trustee?

A. Correct.

Q. Pro-rata?

A. Correct.

Q. If not paid off, everyone shares alike and takes a chance?

A. Yes.

Q. And in lieu of that, I understand, they can pay $40 a bond as part of the expense?

A. No, if they accept that they pay $40.00. They get just exactly what was provided by the original plan.

Q. And pay $40 instead of $20?

A. If that participates in the escrow.

Q. If they don't participate, they still have the option of going under the original plan?

A. Yes. In other words, every bondholder has two options: to obtain a speculative interest, if any, in the value of those claims and pay $40 per bond; or get cash at 33-1/3% and pay $20.00 per bond.

Q. And under the original agreement, he had no speculative interest and only paid $20.00?

A. Correct.

Q. That amendment was made about what time?

A. Within the last four or five weeks—February 23rd.

Q. After objections had been filed and this bankruptcy proceeding had been pending?

A. Yes.

Q. It was made because of Judge Holland's ruling?

A. Yes.

Q. Because he refused to approve the original plan?

A. Yes.

Q. Which embodied the same provision?

A. Yes, sir.

Q. Mr. Lassiter, in the list of judgments
176 shown there is no judgment shown here, so far as I recall, of the Brown-Crummer Company against Avon Park in their own name—is that correct?

A. Probably not.

Q. Did they institute any suit against Avon Park?

A. Only on behalf of clients.

Q. What was the name of the suit?

A. Meredith, possibly; or Meredith, Rogers and Martin.

Q. Instituted through your organization?

A. Yes.

Q. Against the City?

A. Yes.

Q. What year?

A. 1937, I believe.

Q. After your contract was made?

A. I believe it may have been pending before, but it may have been afterwards.

Q. Was that suit contested by the City?

A. It was to start off with, but the contest was abandoned.

Q. And they conceded? What was the result of that suit?

A. Special tax levy.

Q. Pursuant to writ of mandamus?

A. Yes.

Q. What year?

A. 1937-1938.

Q. Do you remember what the millage was?

A. 20 mills.

(Adjournment for lunch.)

Examination of Mr. Lassiter Resumed After Lunch.

By Mr. Patterson:

Q. Mr. Lassiter, with reference to the City of Avon Park generally, I assume you are in accord with the opin-

ion expressed by City officials that the City is
177 unable to pay its debts—or was unable to pay its debts at the time this petition was filed?

A. Unable to pay its debts as they mature—that is correct.

Q. Now, I assume also that in view of the fact that you have submitted this plan, you are of the opinion further that if this plan is carried out the City will be able to pay?

A. Yes, sir.

Q. They will be able to pay principal of bonds as well as interest, you think?

A. Not at par. It is not contemplated that it will be paid at par as now set forth.

Q. There is no provision for payment of less than that?

A. All over and above current interest rate—

Q. And you concur the market price will be less than par?

A. Yes.

Q. With reference to bonds issued for interest, there are certain six months provisions where it steps up from 50-75¢. After the expiration of that 24 months period what will the City do?

A. The City will issue bonds for the unliquidated amount of respective claims.

Q. At par?

A. Yes.

Q. And they will occupy the same classification as bonds issued the refunding bonds?

A. That is right.

Q. Have you any estimate of about how much money will be used in that redemption provision?

A. It is very speculative, Mr. Patterson. My
178 guess would be it would run not less than $30,000 and as high as $60,000. It is what somebody would guess as to how much.

Q. And the price the City will have to pay?

A. It will be governed by the month the money comes in.

Q. It depends also to some extent on how many people—

A. No, they will—

Q. As I understand, the option the bondholders have is to pay $20.00 a bond and turn coupons over to Crummer or pay $40.00 a bond and participate in the fund?

A. Yes, but in any event the coupons are disposed of.

Q. You don't think these bonds will be worth par when this refunding goes through?

A. Definitely not. No, sir.

Q. You cannot say what you think those bonds will be worth to the bondholder?

A. Personally, I think you can figure 50% of the par amount will prevail for some time.

Q. At least for that six months period?

A. Yes.

Q. But you are very definitely of the opinion the City will not be able to pay off these refunding bonds at par figures?

A. I don't say they could not pay them because over a period of thirty pears is too speculative, but the present plan does not contemplate they will be called on to do so.

Q. And that, I am sure, applies to the entire issue and not just to the part which is redeemable to that 24 months?

A. That is right.

Q. With reference to these judgments you bought, it appears that at least three of them were purchased after your contract was made ith the City. Did you buy those for yourself or the City?

A. For ourselves. The City had no money to
179 pay for them.

Q. But you didn't buy them for the account of the City?

A. Oh, no.

Q. And your intention was to realize as much for yourself as you could?

A. That is not the truth.

Q. You have an agreement with the City to refund its judgments at less than the plan?

A. No.

Q. Your intention is to refund the judgments under the plan?

A. Definitely.

Q. And realize as much as you can under the refunding plan?

A. Oh—under the refunding plan, yes.

Q. You bought them for yourself at less than the face amount, you stated a while ago?

A. Yes.

Q. What did you pay for these three judgments?

A. I cannot give you specific figures, Mr. Patterson. I presume I can get them from the Cashier's Department.

Q. It is not necessary, but it would be less than 50¢?

A. Some less, some more—within a range of an average of 50¢ would be an approximate figure. If I may make a statement, I don't think we would hesitate to sell anyone a joint account on them at our cost.

Q. Before we adjourned we discussed the writ or suit brought against the City of Avon Park by Gillespie, etc. I understood that was controlled by your firm?

A. Yes, sir.

Q. And they are officers or parties connected with Brown-Cummer or R. E. Cummer & Company?

180

A. Correct.

Q. What was that suit for? A writ of mandamus on judgment?

A. Writ of mandamus for taxes.

Q. When brought?

A. 1937.

Q. Before your contract or after?

A. I believe I stated I don't know if before or after, but consummated after.

Q. And you got a levy under that writ?

A. Yes, sir.

Q. Can you state whether or not there were any levies in 1937 pursuant to other writs?

A. I am positive there were not.

Q. Was that as a result of agreement with the City?

A. No. We asked them to comply with our writ.

Q. You did not advise them not to make a levy for other writs?

A. I certainly advised them if no other writs required them to make a levy, not to make them.

Q. And there was a levy made in 1938 for debt service?

A. Yes, sir.

Q. Was that made for any writs on judgments?

A. Exclusively for refunding bonds.

Q. And refunding bonds had not been issued?

A. No.

Q. Has any money collected under that levy made pursuant to the writ been turned over to the Crummer Company?

A. Not at all.

Q. It is held in the sinking fund?

A. An interest and sinking fund.

Q. Pursuant to the writ?

A. Yes.

181 Q. That money is not referred to in this refunding plan in any way that I know of. No reference made to that in the plan. Now, in the refunding plan, there is a list of bonds giving matured and unmatured, but there is no list of outstanding judgments. Why was that not included in the refunding plan?

A. Because the plan in the introduction, in the first paragraph, states that the plan considers the bonds or coupons whether in judgment or not and the bond represents judgments, but the judgments are in the schedules.

Q. In other words, bonds represented by judgments are included in bond schedules?

A. Yes, sir.

Q. What becomes of the other portion of the judgment?

A. Those are refunded as if no judgment had been entered.

Q. Any interest included in the judgment would not be considered?

A. Compound interest is not recognized.

Q. What about interest on judgments accrued on past due bonds?

A. Included.

Q. What becomes of Court costs in judgment?

A. Still answered by same thing—as if no judgment had been entered. Therefore, no allowance for Court costs.

Q. No provision in the plan taking care of difference between face of judgment and principal of bonds plus any interest on past due bonds and face of the coupons?

A. That is right.

Q. And under this plan all rights of judgment creditors as such will be wiped out—is that your understanding?

A. That is correct.

Q. You think that the balance of the judg-
182 ment will be canceled or satisfied, or how do you plan to eliminate that?

A. I don't know exactly what you mean by that.

Q. Let me illustrate. Take, for instance, suppose my judgment is based on face value of bonds and coupons of $5,000 and suppose there is $1,000 of past due interest

on coupons and interest which has accrued on the judgment since the date of the judgment and in addition to that, there is $15 or $20 of costs. How will you satisfy the balance of that judgment?

A. It would be eliminated completely.

Q. Would not receive anything for it?

A. No, sir. For the sake of the record, let's be sure we get this straight, that the bonds and coupons represented by judgments will be considered as subject to refunding under the plan as if no judgment had been entered and that in effect eliminates Court costs and compound interest because any other interest accrual is represented by interest coupons that will be attached to the refunding bonds.

Q. Just to make it clear in my mind, I want to be sure I understand the option which exists. The option is that each bondholder may accept the original plan which contemplates that he will pay $20 per bond and surrender his coupons up to July 1, 1937, to Crummer & Company at 33-1/3¢ on the dollar—that is correct, isn't it?

A. Yes.

Q. Or, he may keep his coupons and share in this special fund that is created for their retirement over a period of 24 months at varying rates and pay $40 a bond. Am I correct?

A. That is right.

Q. Then the compensation which the refunding agent will receive will depend on which option the bondholder takes. If under the first option, all bondholders surrender their coupons, I believe you testified a while ago, you would get $20 a bond on 50% or more of the bonds and all of the coupons, amounting to
183 $337,000, a portion of which are owned already by Crummer & Company. If all of them accepted the second proposition, you would get $40 a bond from 50-60% by bonds held by persons other than Crum-

mer and would not receive any of the coupons, except those which you already own, is that correct? If all went under one plan or the other, that would be the operation, is that correct?

A. I believe your statement is correct, except that in determining the charges imposed under the two options, due allowance has been made for the varying factors and it has appeared to us that they constitute practically an offset.

Q. It appears to Crummer & Company that you will get substantially the same amount of money out of the scheme any way it works out?

A. Correct, except not using the word "scheme".

Q. We will say "plan" if you prefer it that way. When you stated that the costs of these judgments to you was approximately within the range of 50¢, did you mean 50% of the face of the bonds included in the judgment or 50% of the face of the judgment?

A. Without referring to specific records, it would be my opinion that the average price of the judgments was the equivalent of 50% of the face amount of the bonds represented by the judgments.

Examination.

By Mr. Phillips:

Q. Mr. Lassiter, this plan that you are advocating is based upon the ability of the City to pay, is it not?

A. Within the ability of human beings to guess it, yes.

Q. That is upon its maximum ability to pay?

A. No, not upon its maximum ability to pay.

Q. Well, upon what ability, may we draw
184 the line?

A. We used one phrase in all operations in Florida which we consider is the proper one and that is, within the reasonable maximum ability to pay. Any at-

tempt to exhaust the last possible ability cannot help but avert and bondholders have never expressed the desire for that type of operation.

Q. And you think it is based upon the reasonable maximum ability to pay?

A. Yes.

Q. It could not within reason pay a larger amount?

A. Not expressed in percentages.

Q. You are aware that Lawrence W. Rittenoure has a judgment between $50,000 and $60,000 against the City and that included in that judgment is $25,000 of notes on which there has accrued possibly $10,000 to $15,000 of interest, which you say is not included in your plan?

A. That is right.

Q. You are familiar with the fact also that levies were imposed by the State and Federal Courts for the payment of those notes, are you not?

A. Yes, sir.

Q. And those levies have never been satisfied. In other words, the moneys ordered to be collected and paid on those notes has never been collected and paid?

A. Yes, sir.

Q. I presume that you contemplate also that Rittenoure will take further steps to procure payment of that indebtedness?

A. Yes.

Q. If, as you say, your present plan is predicated upon the reasonable maximum ability of the City to pay and if you have not made any provision in your plan for the payment of this indebtedness, how do you contemplate the City will take care of it?

185 A. In the first place, the reasonable maximum ability to pay applies to that tax levy and power that will be allocated to service these refunding bonds. We have anticipated its maximum ability to pay for other legal demands on the City; and furthermore, we have taken cognizance of the fact that

the notes of the Rittenoure Investment Company pledged a specific source of revenue in a particular year and it may not be a liability of the City to levy a tax for the retirement of the notes.

Q. You think your conclusion there would be justified in view of the fact that the notes have been reduced to judgment?

A. I cannot express a legal opinion on the rights of the Rittenoure judgment and the City, but I don't believe on a debt problem of one million some odd thousand dollars that the claim of $25,000 note issue would be serious enough to jeopardize the workability of the major program because I am aware of rules of Federal Court which permit spreading of levies over a reasonable time and I have no doubt any Court hearing right of parties would liquidate that judgment over a long period of time where it would not seriously affect the plan.

Q. You will realize on that judgment for $25,000—isn't there accrued on it some interest?

A. You also received some money.

Speaking in relative figures, I take the position which is founded upon very wide experience in this type of operation, that no plant of refunding is very sound if a difference of rights involving such a small percentage of the debt could seriously jeopardize the plan. It makes no difference when you say $25,000 or $50,000.

Q. You procured an injunction without notice to the Rittenoure Investment Company or us, as attorneys, enjoining us from proceeding to collect this $25,000
186 judgment based on notes. If, as you say, that amount is not involved in your plan, why would it be necessary to enjoin us from collecting it?

A. I am not familiar with legal procedure used in the injunction, but unfortunately, your judgment included not only notes but obligations that were affected by the plan.

Q. I will ask, in your opinion, then, if, as you say, our $25,000 of notes are not involved in your plan, any injunction issued against us or the Rittenoure Company from proceeding to collect that portion of the judgment should be dissolved.

A. I don't make that statement. I believe upon presentation of facts to the Court, the Court might take that into consideration, but immediate pressing of that claim, which is liquidated and bearing interest—the immediate pressing of that claim might embarrass the payable debt to make a complete adjustment of the debt structure—then, and in that event, I believe the Court would say we will hold that up. But any Court looking at the problem could not help but reach the conclusion that it had not prejudiced the rights of any creditor.

Q. You regard that portion of our claim, as you said a while ago, as a liquidated claim bearing interest? That is the portion of the judgment based on $25,000 of notes?

A. That is right.

Q. And you anticipate that it will be taken care of in some way as an additional obligation to the obligation set forth in the plan?

A. That is a matter purely between the City and the holder of that judgment.

Q. And I gather from your general remarks that if an attempt to collect it tentatively might jeopardize your plan, you know of no reason why the injunction should not be dissolved proportionately?

A. I believe that is a reasonable conclusion.

187 Examination.

By Mr. Thompson:

Q. With reference to this Meredith levy, do you recall what time that levy was spead?

A. Over what period of time?

Q. When was this writ served on Avon Park?

A. October, 1937—perhaps September.

Q. Did you testify that you instructed the town not to make that levy if other levies were pending at that time or if other writs had been issued?

A. No, what I testified—I stated that I only gave the town what I consider sound fiscal advice, that under the circumstances they were involved in, they should comply with any writs against them and it was my understanding there were no writs then in existence which required a levy of taxes.

Q. Didn't you know a peremptory writ of mandamus was entered July 13, 1936, and served August 4, 1936, on the entire Rittenoure judgment?

A. I knew a writ had been served. The terms of it I did not know. I have never seen the writ. To clarify the record, I could make comments. I was advised from all records I had available that the writ when issued required the performance of a particular duty and I understand that duty was performed and there was some discussion as to whether it did not have other terms, but I say now, the writ can speak for itself as to whether the City performed under the writ or not. I gave no advice as to whether the City had further responsibility under the writ.

Examination.

By Mr. Phillips:

Q. Mr. Lassiter, you have been working with this Avon Park problem for a number of years, have you not?

A. Yes, sir.

Q. And you are familiar with the methods
188 that they used down there in tax collections and their efforts to meet the bonded indebtedness?

A. I am familiar generally with their process.

Q. Do you know that for quite a while they adopted a policy down there of refusing to pay anything on interest by limiting their payments entirely to principal? In other words, if they collected $1,000 in taxes and you went in there with $500.00 of coupons and said, "I want the coupons paid", they would say, "No, I won't pay that, I will only pay principal"—are you familiar with that procedure?

A. I am not familiar with the specific procedure but I am familiar with the fact that for eight years neither I nor anyone else could get coupons paid.

Q. You know when Miss Brown was City Clerk she took the position she did not have to pay interest on interest and therefore she would not pay interest and paid only principal?

A. Principal for interest or bonds?

Q. Bonds?

A. No.

Q. But you did know you could not collect coupons?

A. Yes, I knew we could not get them to pay them.

Q. Were you familiar with the practice they had down there of allocating into two classes the tax levy and allocating a portion of it for operating expenses and another portion for debt service?

A. I am familiar with that.

Q. Don't you know as a matter of fact they encouraged taxpayers to pay the portion to be collected for operating purposes and discouraged them to pay the portion for bond service?

A. I am familiar.

Q. That is a fact?

A. Yes.

Q. You are also familiar with the fact that what moneys they did collect for debt service was largely transferred to the operating fund and was used for operating purposes?

A. No, sir.

189 Q. Don't you know they did that to some extent?

A. My records don't disclose that fact. I tried to prove it one time.

Q. You suspected it?

A. Yes.

Q. From your acticities down there in the last several years, you really don't believe the City of Avon Park ever made a bona fide effort to meet its bonded indebtedness do you?

A. I will answer, if I will be permitted to explain, in this way: I don't think Avon Park or any other town in Florida made any serious effort to collect taxes after they were in serious default. I think they did what they considered the best they could, and as bondholders' representatives, we do not like it and we still do not like it, but it was the thing that forced finally the consideration of the problem before us—an adjustment to erase those difficulties and you know as I do the Legislature of the State of Florida adopted that as a policy by authorizing the collection of operating separate from debt service.

Q. That law was declared unconstitutional?

A. Yes.

Q. Don't you know they had permitted to remain in abeyance for ten years without prosecuting it, a quo warranto proceedings to determine the limits of the City of Avon Park?

A. I don't believe it has been permitted—I cannot see that is material.

Q. You know that case has been pending about ten years?

A. I do.

Q. And the ability of the City to pay would depend a great deal on the extent of its bounds?

A. Not at all. These bonds are validated and definitely contracted the levy of taxes in two separate zones completely disregarding the quo warranto action and those questions were raised and adjudicated.

Q. The property in the outer limits, those you
190 sought to get out of the City Limits, were proceedings under the assumption they would not have to pay these bonds, were they not?

A. I don't know if they were particular interested in the bonds. I am rather convinced from conversations we had with people that they are satisfied for that suit to rest because they are convinced their problem comes within the scope of the litigation of Winter Haven and Ocoee where the outlying territory was established.

Q. Why have they permitted it to remain in that state of inactivity for the last five to ten years—do you know?

A. No.

Examination.

By Mr. Crittenden:

Q. Mr. Lassiter, the Directors of the R. E. Crummer & Company and Brown-Crummer Investment Company are the same, are they not—or practically so?

A. No.

Q. Have they been in the past?

A. No, I don't believe so. There has been, I believe I would be safe in saying, there has been a majority of the Board of both corporations that would be identical. If it will answer your question sufficiently for the record, the control of the two corporations rested in the same persons.

Q. R. E. Crummer is President of both corporations?

A. Yes.

Q. And still is now?

A. Yes.

Examination.

By Mr. Patterson:

Q. Mr. Lassiter, you testified that it is not the assumption under this plan that the City would pay these bonds off at par, is that correct?

A. Yes.

Q. In other words, if they had to pay this
191 whole $1,100,000 at par with accrued interest, you don't think they would be able to pay it?

A. I doubt, in view of present plans.

Q. And the success of this plan is dependent upon the ability to buy in these bonds at reduced values through a period of years both through the escrow fund and other sources?

A. That is right.

Examination.

By Special Master:

Q. Which Crummer Company entered into the contract with the City of Avon Park?

A. R. E. Crummer & Company.

Q. Did that contract designate R. E. Crummer & Company as fiscal agents for the City of Avon Park for the purpose of bringing about this refunding or composition?

A. Yes, sir.

Q. In the plan or contract is there any provision that the City of Avon Park pay any part or portion of the refunding, including fiscal agent, bankruptcy proceedings or otherwise?

A. No.

Q. Does the plan contemplate that R. E. Crummer & Company pay all costs of the refunding and of the bankruptcy proceedings?

A. That is not definitely stated in the contract by use of the words "bankruptcy proceedings", but it is definitely contemplated by the contract.

Q. Is there any agreement between R. E. Crummer & Company and officials of the City of Avon Park that the City in any way compensate R. E. Crummer & Company?

A. No, sir.

Q. Have all the expenses or costs incident to the City of Avon Park, if any, been fully disclosed in this plan?

A. Yes, sir.

Q. There is no portion of the costs or pro-
192 ceedings here to be paid by the City of Avon Park?

A. No, sir.

Q. The compensation provided in the plan for R. E. Crummer & Company includes all of their work and expenses incident to bring the plan about and bring it into fruition, is that correct?

A. Correct.

Examination.

By Mr. Patterson:

Q. You say there is no agreement the City will pay R. E. Crummer & Company any compensation for this plan?

A. That is right.

Q. Won't the City have to pay for all of the bonds and coupons Crummer has and gets under the plan?

A. If you want to consider that as compensation.

Q. These coupons that are turned over to you at 2% will be paid at whatever price Crummer would sell them to the City at?

A. Yes.

Q. So, if they sold at 50% on the dollar, you would have 50% on those coupons turned over to you which costs you nothing?

A. They don't cost us nothing. If a bondholder turns them over to us we pay him 33-1/3¢.

Q. All right, but if you cash them at 50¢ you make something?

A. Yes, but if the market is 10¢ we would make less than cost.

Q. And if you sold them at 66 you would make 100% profit on those coupons?

A. Except the use of the word "profit" because there are costs charged against it.

Q. Does the City not agree to reimburse
193 Crummer for these bonds?

A. Not the slightest, if my interpretation of the act is correct. If you want to infer because a bondholder elects to sell his coupons to us at 33-1/3 and we sell them at 50, if we could sell them to an outsider, that would not be compensation.

Q. The question I asked was—was there any agreement to reimburse the costs and expenses of the City?

A. No.

Q. In other words, you expect to make your compensation principally out of the bondholders in the record through bonds and coupons?

A. Out of fee collected from bondholders, or profit or loss, if any, in purchase of securities.

Cross Examination.

By Mr. Pleus:

Q. Mr. Lassiter, what is your official position with R. E. Crummer & Company?

A. Vice-President.

Q. How long has Brown-Crummer Investment Company and R. E. Crummer & Company been associated with this debt problem in Florida?

A. Since the time of the original issue of bonds in 1924.

Q. When was R. E. Crummer & Company formed?

A. April, 1934.

Q. What was its primary purpose?

A. It was organized almost exclusively for the purpose of representing the clients of Brown-Crummer Company who had purchased bonds in Florida that were then in default in substantial amounts and because the stock ownership of Brown-Crummer Company was not unanimously of the opinion that the capital of the company should be risked in what was then thought to be an unprofitable operation.

194 Q. What is the scope of the operations and experience of you and your company in primarily the readjustment of the bonded indebtedness of Florida taxing units?

A. Beginning with an organization of two in 1931 and building up to an organization now of more than 35 people working constantly on nothing but debt adjustment problems, we have handled or are now in process of handling the debt problems of more than 200 taxing units which owe an aggregate debt of more than $130,000,000.

Q. Now, are the answers you have given to the questions that have been propounded to you been based upon this experience?

A. They were.

Q. And based upon that experience, it is your opinion and the opinion of R. E. Crummer & Company as fiscal agent that the plan of composition involved in these proceedings represents the maximum reasonable ability of the City of Avon Park to meet the indebtedness proposed to be refunded?

A. That is correct.

Q. Now, your original contract with the City of Avon Park was dated July 17, 1937.

Mr. Patterson:

I object to Mr. Pleus examining the witness unless he states in what capacity he appears.

Examination of Mr. Pleus.

By Mr. Patterson:

Q. Are you representing Crummer in this proceedings as agent of the City or creditor.

A. I am neither agent or creditor of the City. I am attorney for R. E. Crummer and Company and in such capacity I am representing them in this proceedings as a matter of record.

Q. I submit that R. E. Crummer & Company is a claimant and as such as the same standing I have as creditor.

Special Master:

State your capacity for appearing and I will rule on the objection.

195 A. My client appears as both fiscal agent and as a creditor as the record discloses. My client has been summoned or his testimony and evidence have been tendered and the cross examination is now made on the basis of direct examination of that client. The capacity in which that client was examined is a matter of record and so long as cross examination goes no further than direct examination, then I can see no objection.

Mr. Patterson:

I have no objection if he will state in what capacity he appears.

A. I am representing R. E. Crummer & Company in the capacity both as fiscal agent and as creditor of Avon Park.

Objection overruled.

Cross Examination of Mr. Lassiter Continued.

By Mr. Pleus:

Q. The original contract between the City of Avon Park and R. E. Crummer and Company was under date of July 17, 1937. Were bankruptcy proceedings contemplated at that time?

A. No. There was no bankruptcy act.

Q. The original act had been declared unconstitutional?

A. That is right.

Q. The contract contemplated a voluntary exchange?

A. Yes.

Q. And the provisions and terms thereof were with reference to a voluntary exchange?

A. That is right.

Q. Following the entry into that contract, R. E. Crummer & Company proceeded to perform it by contacting bondholders, securing their consents to the plan of refunding and supervising the issuance and validation of refunding bonds?

A. That is correct.

Q. This bankruptcy act, under which we are now proceeding, was enacting August 16, 1937, and following that was it determined necessary to revoke its provisions?

A. Not immediately.

196 Q. How soon?

A. Not until some time in 1938.

Q. Why was it found necessary?

A. Because of the objection of certain litigation creditors to acceptance of the voluntary plan.

Q. Those creditors seeking a preferential right or status?

A. Yes.

Q. Which they refused to voluntarily give up?

A. That is right.

Mr. Patterson:

I object to it being a conclusion of witness.

Objection overruled.

Q. Did you have any correspondence with these creditors objecting prior to the time bankruptcy proceedings were revoked?

A. Yes, sir.

Q. Which ones?

A. I think we have had correspondence with all of them either direct or through counsel—Lawrence W. Rittenoure, Roger W. Babson, William E. Sweet, American United Life Insurance Company, then the United Mutual Life Insurance Company. I believe they are principal objectors.

Q. Did you have any correspondence or dealings or relations with those creditors prior to the contract or announcement of the original plan?

A. Some of them.

Q. Which ones?

A. American United Life Insurance Company and William E. Sweet.

Q. What was the nature of that correspondence?

A. With reference to the American United Life Insurance Company, we were corresponding on the theory that the past negotiations between ourselves and the City of Avon Park, which were constantly reported to a representative of American United Life Insur-

197 ance Company, were in accord with the objectives of this institution as one of the creditors

of the City. We were asking them to consent to the voluntary plan of composition and we thought they were in accord with it.

Q. What about William E. Sweet—along the same line?

A. We had not very much correspondence with Mr. Sweet specifically regarding Avon Park but his attitude toward us for many years in the past and the comments we had exchanged about Avon Park up to that time led us to believe he was not in disagreement with the objectives we sought to accomplish and finally wound up with Mr. Sweet expressing an objection to the plan of refunding and asking if we would not purchase his judgment.

Q. He attempted to procure the purchase of his judgment by you or your company?

A. Yes, sir.

Q. Now, the modified plan was proposed February 23rd, 1939. Why was that done?

A. Purely to correct certain technical phases that had developed in the Vero Beach plan of bankruptcy. We having readily admitted that there being no precedent for this type of operation, that certain final changes would have to be made from time to time and the minute we had a ruling on the Vero Beach matter, we initiated moves to correct this, primarily concerning ourselves with the problem of handling interest adjustments because in the Vero Beach plan we had merely adopted verbatim the voluntary plan submitted and that called for handling interest adjustment claims by issuing $1,000 denomination bonds in $1,000 denominations and a voluntary purchase or sale of odd amounts and fortunately the Court was inclined to the view that if it only effected no charge, that the sale of one bondholder to another bondholder could not be coerced and suggested early in the hearings a modification made in that matter, later confirmed and then transferred to the Avon Park plan practically verbatim.

Q. What is the theory of providing for the escrow of the interest adjustment items to be used as

198 provided in the modified plan over a period of time for purchase at set figures?

A. Unfortunately, laymen not familiar with the fact that bonds sell in relation to each other and that the general market determines the price at which any particular security will sell in relation to the other, and the City officials in Avon Park were quite concerned that there might be a controlled market that would not permit them to retire their debts at anything less than par. A controlled market is impossible and we knew that to be true, but the City officials of the City, even those now present who considered this plan before January 1, 1938, wanted some assurance that if they could stimulate their tax collections in Avon Park, they would have ability to retire their debt at something less than the par amount of securities. The plan merely set an estimate of what is a very high estimated value of the bonds at some future date and only guarantees to the City that there can not be a controlled market above that figure. The City has the privilege of buying bonds at 10c if they can get them, or 40c, but they know they can buy them at not exceeding 50c for a period of time because of the limitation for the future. It was our view, concurred in with those we consulted, and proved by experience, that an ability to retire bonds at a price with current valuation instituted a real incentive for public officials to go out and encourage payment of taxes.

Q. Primarily delinquent taxes?

A. Yes.

Q. Then it was an offset to the delinquent tax roll with the incentive to use those for a purchase of less than par?

A. It was considered if the City of Avon Park could go to the people and say "we have an option on these bonds for a defined period of time at a specific
199 maximum price" that their ability to put patriotic pressure on the people to do today what they

might do six months or a year later was justified from a bondholder's viewpoint.

Q. Have there been any extra costs on R. E. Crummer & Company because of the necessity of this bankruptcy proceeding?

A. Tremendous.

Q. Has there been any additional charge made on that account?

A. No, sir.

Q. Why was it you set 33-1/3% of interest accruals as the purchase price of interest items under your original plan, which is the option that is still given to the bondholders?

A. Because at that time bondholders that were working with us and consulting with us in the development of the plan reasonably considered 2% interest rate on the City was a fair rate. We had demands of different types of creditors and the City had demands of different types of creditors, the City wanting a guaranteed policy for the use of their surplus funds. The bondholders largely preferred cash for interest claims. At that time the original proposal was made and I believe still today, the price of 33-1/3% cash for the coupons is as much as anybody could get out of an equivalent claim against the City of Avon Park. Today, if you took the quoted price of Avon Park bonds, the principal, and added interest total and reduced it to a dollar principal par value by applying the flat price for the total against the aggregate claim, you would arrive at a figure not sufficiently different from 33-1/3¢ on a dollar to justify any material argument.

Q. Now, Mr. Lassiter, in approaching the problem of this sort, such as your debt in Avon Park, do you go there as a representative of bondholders or of whom?

A. We go there definitely as a representative of bondholders.

Q. Very frequently following litigation on be-
200 half of bondholders to enforce their claim?

A. Yes, sir.

Q. There is no misrepresentation of your status?

A. We never pretend to represent a taxing unit until terms satisfactory to bondholders we represent have been agreed upon.

Q. And at that time you consider an identity of interests between the taxing unit and holders you represent?

A. Yes, sir.

Q. This Meredith, Rogers and Martin writ in Circuit Court of Highlands County, resulted in a peremptory writ, did it not?

A. Yes, sir.

Q. Pursuant to that writ a tax levy was made of how many mills and in what year?

A. 20 mills on Zone "A" and 12 mills on Zones "B" and "C" in the year 1937.

Q. Have any moneys resulted from that levy?

A. Moneys have resulted but Meredith, Rogers & Martin have not collected $1.00 of it.

Q. What is going to be done with that?

A. That money is to be used by the City of Avon Park in meeting the first year's appropriation for sinking fund under the refunding plan, notwithstanding the fact that Meredith, Rogers & Martin have legal right to the money. They are waiving it in for favor of creditors as a whole.

Q. In other words, you have not used your contract with the City of Avon Park to personally benefit Meredith, Rogers & Martin or any other customers you represent?

A. Not to the extent of $1.00.

Q. Have the refunding bonds in contemplation been authorized and validated?

A. They have.

Q. In regard to judgment creditors, the plan
201 proposes that judgments shall be refunded just the same as if no judgments had been entered—is that correct?

A. That is correct.

Q. What differental is there between the holder of a judgment and that same individual had he held only the securities involved in that judgment? In other words, what rights would he lose?

A. He, in my judgment, loses no rights, because every other bondholder could put himself in an identical position with a minimum of effort and cost. The holder of a judgment is in exactly the same position as the holder of equivelant securities without a judgment in so far as legal right is concerned. One has merely evidenced it by a judgment—the other has not.

Q. In that judgment there will have been interest accrued on the past due bonds from the date of maturity to the date of judgment and interest on that portion of the judgment represented thereby to the date of exchange or date of July 1, 1937, in this instance. What of that will he have to relinquish?

A. Only the interst that represents interest upon interest itself. The compound interest figure.

Q. The same is true with reference to coupons?

A. That is right.

Q. This $20.00 charge in the instance of the first option and $40.00 charge in the instance of the other option is based on what as between bonds and coupons? Is it $20.00 on the coupons?

A. Only $20.00 on the principal debt, the bonds themselves, and $40.00 on the bonds themselves.

Q. In other words, there is no charge whatsoever based upon the refund of the interest liability?

A. Correct.

Q. Whether it is represented by coupons or
202 interest on past due bonds?

A. Correct.

Q. The charge is based solely upon principal debt that shall be refunded?

A. That is right.

Q. Do you recall what year's collections were allowed on debt service taxes or operating taxes separately without paying the other?

A. I can not say positively, but I believe that continued rather consistently from the time of Mr. Rittenour's first suit in 1930 until 1937.

Q. Was any such thing done after your contract with the City?

A. Not to my knowledge.

Q. That was a rather general practice under that statute enacted, before it was declared unconstitutional, in any taxing units, was it not?

A. Oh, yes. Unless injunctions were brought to stop it.

Q. You stated that the 1938 tax levy was solely for the refunding bonds and that such bonds had not been actually issued—that is correct?

A. That is correct.

Q. However, those had been authorized and validated and were ready for issuance?

A. That is correct.

Q. And it was contemplated that prior to the end of the fiscal year for which the levy was made the exchange would take place and the moneys remain applicable to refunding bonds?

A. Correct, and in addition, it was made under provisions of the original order in bankruptcy in this matter authorizing putting the plan temporarily into effect.

Q. Mr. Lassiter, why did R. E. Crummer &
203 Company or Brown-Crummer Investment Company buy these judgments?

A. The judgments were the legal representation of the debt which had been largely embarrassing the City by mandamus actions to compel high tax levies that the people of Avon Park apparently either could not or would not pay. The discussions came at a time when bankruptcy was not contemplated and it appeared to us that one of the best

ways to assist in the accomplishment of the results sought was to purchase those judgments if they could be purchased at any reasonable figure and they were purchased for that purpose and that purpose only. The price was, in most cases, higher than the then current price for bonds themselves but notwithstanding that fact, they are handled under the plan of bankruptcy as if no judgment had been entered.

Q. Were they freely floating assignable obligations that anybody could have bought?

A. Anybody could have bought them.

Q. Any or every one of them either of these companies own are consenting to the plan?

A. Every one.

Re-Direct Examination.

By Mr. Patterson:

Q. First of all, Mr. Lassiter, with reference to the bonds of Avon Park you said you represented and that the City knew you represented, there are three proofs of claim of bonds owned by Brown-Crummer and R. E. Crummer & Company, were those bonds owned by those corporations or do they merely represent them?

A. I am sure they own them, Mr. Patterson.

Q. In other words, you don't know of your own knowledge?

A. I don't because there are so many transactions.

Q. The Brown-Crummer Investment proof shows $146,000 par value of bonds owned by them, exclusive of coupons or interest, and a small one and R. E. Crummer & Company, $95,000—do you know about them?

204 A. Yes. I hate to say positively. We handle too many transactions to remember the details, but I would say they do own them. I recall purchases.

Q. These are not just bonds you represent?

A. No.

Q. The proof of claim says you own them.

A. That is correct.

Q. So when you said you represent bondholders, you meant represent your bonds?

A. I think you will find they were not purchased until after the contract was signed.

Q. Which one?

A. Either one. I could not say positively. You can refer to the date of the assignment.

Q. These are not judgments. These are separate from judgments.

A. We did own bonds prior to the execution of the contract, Mr. Patterson.

Q. What I was asking was first of all, whether you knew that Brown-Crummer owned the $146,000 of bonds and Crummer owned $95,000, filed here with proof of claim.

A. Prior to a certain time?

Q. Whether they own them now.

A. Sure.

Q. And you say they were purchased after the contract was signed?

A. Either that or about the same time.

Q. Both companies?

A. Yes.

Q. So that at the time you went down there before the contract was signed, you were really representing the bonds and had not purchased all of them?

A. Probably not all of them.

Q. And you were representing other bond-
205 holders as you said your organized R. E. Crummer & Company to represent bonds of Brown-Crummer Investment Company?

A. Clients of Brown-Crummer Investment Company.

Q. In talking about expense of bankruptcy proceedings, there is nothing in the contract to obligate Brown-Crummer to pay the expense, is there?

A. Only, I believe if you will refer to Item E of Section 7.

Q. "All other expenses in connection with the refunding which may be approved by said R. E. Crummer & Company"?

A. Yes, sir. That is copied from the contract of July, 1937 and Item E of that contract provided accordingly.

Q. In other words, it was up to you to approve that?

A. Yes, sir.

Q. With reference to the use of the interest bonds, you testified in response to Mr. Pleu's questions that they were to be used by tax payers in settling delinquent taxes?

A. It has that ultimate effect, Mr. Patterson.

Q. Didn't you say it was the reason for fixing the 50% and so on percentages?

A. Yes, but it was to guarantee the City when they collect the taxes the taves will result in the liquidation of a substitantial portion of the debt.

Q. You will allow the tax payers to use them at reduced prices?

A. I don't think it is contemplated. I think the City will appraise those properties and collect the taxes and with the money received will purchase bonds at given prices.

Q. What I want to know—my understanding was that the City would be able to buy those from the Trustee at fixed prices, using the surplus revenues over and above your amount necessary to pay coupons?

A. Yes.

Q. But I got the impression that the question
206 of delinquent taxes was involved.

A. Delinquent taxes would constitute the source from which surplus would be realized.

Q. In collecting delinquent taxes, they could or could not utilize these refunding bonds held by the Trustee?

A. I don't believe they could use those at all direct, Mr. Patterson. The City collects the taxes and the City buys it and the tax payer gets the benefit.

Q. So the delinquent tax proposition is not involved?

A. Only, if you will refer to my testimony, the psychological effect to satisfy the City officials that they may retire the debt at guaranteed prices.

Re-Cross Examination.

By Mr. Pleus:

Q. Mr. Lassiter, did any of these objecting creditors, those who are now objecting, collaborate with you or your company in working out the original plan of refunding?

A. Yes.

Q. Which ones?

A. American United Life Insurance Company.

Q. To what extent?

A. I believe I am safe in stating that either one or two representatives of American United Life Insurance Company called at our office an aggregate of 15 or 20 times to discuss developing a plan of refunding in Avon Park. I attended meetings of the City Council and, I personally did either by myself or with other representatives of the company, on at least two occasions that I can remember, when the discussions were limited exclusively to an effort to develop a plan of refunding and the terms that the City had proposed through other sources where objectionable to bondholders present and representatives of American United Life supported very admirably our request for a modification of those terms and the terms that were indorsed for adoption by the City of Avon Park six or eight months before the date the contracts were
207 signed were almost identical with the terms of the contract.

Examination.

By Mr. Patterson:

Q. Who was the representative?

A. Harry B. Wilson, present in this room, called at my office and during Mr. Wilson's absence, D. A. W. Bangs.

Re-Cross Examination Resumed.

By Mr. Pleus:

Q. What was his capacity?

A. At that time he was acting as Florida representative. Now he is in the home office at Indianapolis, investment Division.

Examination.

By Special Master:

Q. Mr. Lassiter, you have testified to a wide experience in the matter of bond refunding or compositions of indebtedness of municipalities. Are you also familiar with the economic situation in Florida following the collapse of the Florida boom?

A. Very familiar, sir.

Q. Are you familiar with the economic condition generally following the collapse or break down or National panic following 1929?

A. I try to keep generally posted.

Q. In the matter of refunding or composition of debts of municipalities, about how many plans of refunding or composition have you had to deal with, approximately, and about how many years' experience have you had?

A. My first experience with this work was in watching municipal affairs of the City of Miami as Police Reporter in 1926. Then later, the municipal affairs of the City of DeLand while I was completing law education there. In 1928, before the public at large had any idea there was any

difficulty with debt problems in Florida, I made an intimate county-by-county, issue by issue, analysis of 21 counties of Florida. The original records of which
208 analysis are still available. As a result of which, we exposed a gradual weakening of the tax structure of Florida before the average person was aware of conditions. From 1929 until 1932 the primary problem in Florida was in collecting coupons, that is all. I mean getting in an automobile and trying to whip a few dollars out of a particular situation, and Avon Park was one. From 1932 to today I have not spent 2% of my time doing anything but working on problems exactly like Avon Park. 200 taxing units have had their affairs handled through our office.

Q. Have you computed or do you know what percentage of the total indebtedness of the City of Avon Park as represented in this plan are objecting to the plan?

A. I understand approximately 31% have not consented formally. So far as objections are concerned, I can not say, but I imagine about 10%.

Q. Mr. Lassiter, you are familiar with every detail of this plan of composition or refunding as proposed by the City of Avon Park?

A. Yes, sir.

Q. Do you consider it fair and equitable?

A. Yes, sir.

Q. Is it for the best interest of creditors?

A. Yes, sir.

Q. Does it discriminate unfairly in favor of any creditor or class of creditors?

A. No, sir.

Q. Was the plan of composition offered in good faith?

A. It was, sir.

Q. Do you know whether or not the acceptance, so far as you are familiar with them of the plan, were in good faith?

A. Yes, sir.

By Mr. Patterson:

Q. Mr. Lassiter, United Mutual never did accept this plan of refunding, did they?

A. No, sir.

Q. And those conversations were just preliminary conversations?

A. Yes, sir—in the interest of clarifying, may I make two statements? With relation to the development of a debt problem in Florida, we have never yet, with one exception, asked a bondholder in advance to execute any authority to us, giving us any authority to do anything. We have taken all of the risk of the development of the plan based upon information.

Mr. Patterson:

I object to answer of witness.

Objection sustained—counsel has right to object to voluntary statement.

Re-Cross Examination.

By Mr. Pleus:

Q. Mr. Lassiter, Mr. Patterson asked with reference to American United Mutual whether or not it had ever accepted the plan or consented to it. Your answer was "no", which with the further explanation might appear contrary to the statement previously made to the effect that this company had collaborated with you in working this problem out. Would you explain that to the Court by showing the method that is used in approaching a problem of this kind?

Mr. Patterson:

I object.

Objection overruled.

A. We have always proceeded on the theory that a fair plan of composition would be acceptable to owners of a majority of the bonds and we had never, with one exception, asked bondholders to give prior consent to any plan, the final terms of which could not be known in advance, and we have taken the normal risk of developing a plan based upon informal discussions in the hope that approval would be obtained.

210 Mr. Patterson:
I object—I don't see materiality.

Objection sustained.

Q. Tie it in definitely, Mr. Lassiter, to the fact that this same method was used with reference to the American United Mutual.

Mr. Patterson:
I object.

Objection overruled.

A. I have answered that American United Life did not consent to the plan of refunding which is the basis for this bankruptcy act. We do not know why that consent has not been forthcoming as we were proceeding on the theory that the plan as defined conformed to preliminary informal discussions.

Examination.

By Special Master:
Q. Did it conform generally to informal discussions?
A. So far as I know—we know of no variation.

Re-Direct Examination.

By Mr. Patterson:

Q. You don't mean to say there was any misrepresentation or anything of that kind?

A. Not the slightest.

Q. You don't charge them with any bad—

A. No.

Q. You don't know why?

A. We just don't know why the plan, which was developed, we thought, in accordance with the understanding, has not been accepted.

Mr. Thompson:

At this time I wish to file a Motion of Lawrence W. Rittenoure to be considered in this matter by the Court.

211 Mr. Crittenden:

If the Court please, I want to offer in evidence the Judgment and Peremptory Writ of Mandamus attached to the Objection to the Plan of Composition filed herein by Roger W. Babson on October 14, 1938. Received and marked Exhibits "C" and "D" of Roger W. Babson.

Mr. Thompson:

Lawrence W. Rittenoure is filing his exhibit attached to Objections and Exceptions to Petition which is copy of peremptory writ of mandamus and no objection was made to filing. Marked Exhibit "A" of Lawrence W. Rittenoure.

Objectors rest. Both sides having announced the closing of testimony, it is considered closed this 22nd day of March, A. D. 1939.

ALLEN E. WALKER,
Special Master.

212 On March 31, 1939, the Special Master filed his Report, said report being in words and form as follows:

SPECIAL MASTER'S REPORT.

213 (Title Omitted.)

To the Honorable Alexander Akerman, Judge of the above styled Court:

The undersigned, Allen E. Walker, as Special Master herein under and by virtue of orders of appointment made and entered by the Honorable Alexander Akerman, Judge of the United States District Court for the Southern District of Florida, hereby reports to the Court, in accordance with the said orders of the Court, as follows: That on the 15th day of August, A. D. 1938 an order or decree was entered by the Court approving the Petition of the City of Avon Park, Florida as properly filed and providing that claims be filed with the undersigned Special Master and a Preliminary Report of Claims filed with the Special Master was filed with the Clerk under date of October 31, 1938, pursuant to said order; that the time limit for filing claims with the Special Master was continued from time to time by order of the Court and the Special Master filed a Supplemental Report of Claims Filed under date of January 3, 1939.

That on the 31st day of October, A. D. 1938, the Court entered an order referring this cause to the undersigned Special Master for the purpose of taking testimony and making findings of fact and conclusions of law, as is provided in said order. Pursuant to said order, notice of a hearing to be held at 225-6 Beymer Building in the City of Winter Haven, Florida, on the 16th day of March, A.

D. 1939 was mailed to all creditors of the City of
214 Avon Park, Florida on the 3rd day of March, A. D. 1939; and the time for taking testimony and making findings as aforesaid was continued by order of the Court to April 3, 1939; and accordingly a hearing was held on the 16th day of March, 1939 for the purpose of taking and considering testimony and reporting upon the matters and special issues set forth in the said Order of October 31, 1938, which said hearing was continued to March 22, 1939, same being held in the Assembly Room, Third Floor of the Court House, in Orlando, Florida. At the hearing held March 22, 1939, Counsel representing the Petitioner and Objectors announced the closing of testimony and waived argument before the Special Master, all parties reserving the right to file written briefs with the Special Master. That said hearings were held at Room 225-6 Beymer Building, Winter Haven, Florida and Assembly Room, Third Floor of the Court House, Orlando, Florida, respectively, and that at said hearings the said Municipal Debtor, the City of Avon Park, Florida, was represented by its officers and by its attorneys, Henry L. Jollay and T. A. McNicholas. Objections had previously been filed by Touchton & Crittenden, representing Roger W. Babson; Phillips & Thompson, representing Lawrence W. Rittenoure; Smith Brothers, of Clay Center, Kansas; and Giles J. Patterson, representing William E. Sweet and American United Life Insurance Company; and that all of said objections and pleadings filed as aforesaid were carefully considered by the undersigned Special Master.

That a transcript of said proceedings had and the testimony taken thereat is hereto attached and made a part hereof.

That at the hearing held on Mach 16, 1939, the following list of claims was presented, examined, allowed and classi-

fied as general obligations of the City of Avon Park, payable without preference out of funds derived from the same source, viz.:

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
1.	Mrs. Rose K. Raithel, 60 Kingsbury Place, St. Louis, Mo.	$2,000	$ 900.00
2.	Board of County Commissioners, Highlands County, Sebring, Fla.	4,000	.....
3.	Smith Brothers, Clay Center, Kansas	5,000	2,100.00
4.	Florida Municipal Bondholders' Protective Committee, Room 406 Hildebrandt Bldg., Jacksonville, Fla.	51,500	20,270.83
5.	Thomas M. Cook & Company, West Palm Beach, Fla.	23,000	715.00
6.	J. O. Adams, 400 Roosevelt Bldg., Los Angeles, Calif.	3,000	1,305.00
7.	Charles H. Albers, Receiver Northwestern Trust & Savings Bank, 7 So. Dearborn St., Chicago, Ill.	5,000	.....
8.	Harry F. Berls, 1727¾ N. Sycamore Ave., Los Angeles, Calif...	20,000	.....
9.	P. M. Boyd, 215 E. Duval St., Jacksonville, Fla.	4,000	.....
10.	Brown-Crummer Investment Co., Room 800 First Natl. Bank Bldg., Chicago, Ill.	3,000	1,.305.00
11.	R. B. Bryan, Route #2, Madison Fla.	3,000	.....
12.	Johanna Calmer by Warren J. Bleyaert, Agent, 220 W. Sixth St., Monroe, Mich.	2,000	910.00
13.	Fred P. Carr, 1000 Insurance Exchange Bldg., Des Moines	3,000	45.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
14.	Bank of Cattaraugus, Cattaraugus, N. Y.	1,000	.....
15.	R. E. Crummer & Company, Chicago, Ill.	....	25,243.33
16.	W. P. Davis, 314 Equitable Bldg., Des Moines, Iowa	10,000	2,495.00
17.	Erwin R. Effler & LeRoy E. Eastman, Trustees U/W of Mary Sedate McCann, deceased, Toledo, Ohio	2,000	.....
18.	First National Bank of Monroe, Monroe, Mich.	3,000	1,365.00
19.	Oliver C. Foreman, 58 E. Washington St., 2018 Chicago, Ill.	5,000	.....
20.	Mrs. Dorothy B. Gossard, 6707 Colorado St., Overland Park, Kansas	10,000	4,350.00
21.	Julia D. Green, 171 W. 57th St., Shelton Island Heights, N. Y.	1,000	.....
22.	Edwin M. Hadley, Jr., 629 Kimball Rd. Highland Park, Ill.	5,000	.....
23.	A. S. Huyck & Company, 100 West Monroe St., Chicago, Ill.	10,000	.....
24.	Walter J. Krager, Cattaraugus, N. Y.	1,000	.....
25.	O. J. Kruger, 111 W. Fifth St., St. Paul, Minn.	5,000	75.00
26.	Henry F. Lankow, Little Valley, N. Y.	2,000	620.00
27.	Clifford Lathrop, First Natl. Bank Bldg., Wichita, Kansas	16,000	1,920.00
28.	Frank Lathrop, First Natl. Bank Bldg., Wichita, Kansas	10,000	1,350.00
29.	Life & Casualty Insurance Company of Tennessee, 159–4th Ave. N., Nashville, Tenn.	5,000	800.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
30.	Rene D. Mallett, Hendersonville, N. C.	1,000	100.00
31.	Prairie State Bank, Augusta, Kansas	18,000	1,170.00
32.	J. D. Puller, Thomas D. Green and W. J. Zalesky, Trustees of J. T. Dismukes, deceased. (Mr. Puller, St. Augustine, Fla.)	25,000	.....
33.	J. D. Puller, St. Augustine, Fla.	2,000	.....
34.	Howard Scott, Neodesha, Kan.	1,000	420.00
35.	W. H. Stone, Bristol, Tenn.	5,000	.....
36.	Security Benefit Association, Topeka, Kansas	38,000	5,130.00
37.	Susan Sheaff, Holcomb, Ill.	4,000	160.00
38.	C. L. Swan, Erie, Kansas	5,000	1,200.00
39.	Emma Thornton, Coldwater, Kansas	5,000	375.00
40.	Nellie R. Yeasting, 2817 Powhattan Parkway, Toledo, Ohio	5,000	.....
41.	Elizabeth D. Zalesky, c/o National Savings & Trust Co., Washington, D. C.	1,000	.....
42.	Lawrence Leirman, Winfield, Kansas	7,000	315.00
43.	Carl A. Morawitz, Wichita, Kansas	2,000	780.00
44.	Curtis C. Coxe, as Agent for Trustees of assets of former People's Bank for Savings, St. Augustine, Fla.	8,000	3,680.00
45.	R. E. Crummer & Co., Chicago, Ill.	10,000	450.00
46.	The Brown-Crummer Investment Co., Wichita, Kansas (Claim #46 covered by judgments.)	24,000	58,535.00
47.	R. E. Crummer & Company, Chicago, Ill.	.....	3,460.00

Claim No.	Creditor and Address	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
	(Claim #47 covered by judgment.)		
48.	The Security Benefit Assn., Topeka, Kansas	.....	11,400.00
	(Claim #48 covered by judgment.)		
49.	Aid Association for Lutherans, Appleton, Wis.	5,000	2,300.00
50.	Margaretha Vogt, Box 753, Avon Park, Fla.	1,000	.....
51.	F. R. Messenger, 300 N. Terrace Drive, Wichita, Kan.	9,000	4,140.00
52.	R. E. Crummer & Company, Chicago, Ill.	95,000	14,168.33
53.	R. E. Crummer & Company, Chicago, Ill.	1,000	1,540.00
54.	Brown-Crummer Investment Co., Wichita, Kansas	146,000	35,774.17
55.	F. C. Swinburne, Box 22, Clearwater, Fla.	5,000	3,095.00
56.	Roger W. Babson, by Touchton & Crittenden, Attys., Winter Haven, Fla.	.....	.....
	(Claim #56 covered by judgment)		
57.	William E. Sweet, Denver, Colo...	11,000	1,155.00
	(Claim #57 covered by judgment)		
58.	The American United Life Insurance Co., Indianapolis, Ind.	35,000	4,550.00
59.	American United Life Ins. Co., Indianapolis, Ind.	.....	11,550.00
	(Claim #59 covered by judgment)		
60.	Lawrence W. Rittenoure, by Harry L. Thompson, Attorney, Clearwater, Fla.		
	(Claim #60 covered by judgment)		

Claims Nos. 56, 57, 59 and 60, represented by judgments and not accepting the plan as outlined by the Petitioner, are to be allowed only in the amount of the claim representing the total amount of bonds and interest coupons up to July 1, 1937.

The Petitioner, City of Avon Park, acknowledges the validity of all claims, except as to the amounts represented by the judgments in Claims Nos. 56, 57, 59 and 60.

The claim of Rose K. Raithel, No. 1, is a duplicate claim, which amount is included in Claim No. 4; therefore, the claim No. 4 has been reduced $2,000 principal and $800.00 interest as included in said claim.

The total amount of claims as allowed, which have filed acceptances of the plan of composition herein shows a principal amount of $627,500.00 and interest accrued to July 1, 1937 of $207,766.66, or a total principal and interest of $835,266.66.

FINDINGS OF FACT.

Pursuant to the Order of the Court, and after hearing and carefully considering all the evidence offered, The Special Master does now hereby make the following findings of fact:

(1) That the petitioner, City of Avon Park, Florida, is a municipality under and by virtue of the laws of the State of Florida, situated in Highlands County, Florida, within the territorial jurisdiction of this Court, and that it was a duly constituted municipality at all times during which the bond issues affected by the plan of composition

involved in this proceeding were made and issued,
219 and that it is such a municipality as comes within the terms and provisions of Chapter IX of the Bankruptcy Act of the United States, as amended.

(2) That the petitioner, City of Avon Park, Florida, is a municipality or taxing district within the meaning of the said terms, as used in Chapter 15878, Laws of Florida, Acts of 1933, conferring upon municipalities, taxing districts and political subdivisions of the State of Florida power and authority to institute proceedings and accept the benefits of any amendments to the bankruptcy laws of the United States enacted for the relief of municipalities, taxing districts and political subdivisions.

(3) That the municipal debtor, City of Avon Park, Florida mailed and published all notices as required by the Order of the Court entered on the 15th day of August, 1938, and filed proper certificates thereof.

(4) That said City now has and has had for several years last past a population of approximately 3500, of which approximately 600 are colored people; that the City has a limited amount of industry or business and that since the year, 1925, there has been a decline in business; that all the banks within said City failed prior to 1930 and business conditions have been seriously affected in the City thereby; that the assessed valuation of property within the said City as presently constituted, subject to taxation, amounts to $2,504,087, being the assessed valuation for the year, 1937, no later valuation being given in the testimony; that the assessed valuation of property within the City of Avon Park for the year, 1926, was $6,536,256.00 and valuations had declined from that time to the year, 1937, to the sum of $2,504.087.00; and over a long period of years the City has been able to collect only approximately 40% of the total taxes levied by the City.

220 (5) That the aggregate amount of bonded indebtedness and interest thereon to July 1, 1937 to be affected by the plan is as shown in Section 1 of the Plan of Composition of the City of Avon Park, Florida, as Modified, and aggregates the sum of $865,500.00 principal, and $358,251.76 interest accrued thereon to July 1, 1937, whether represented by coupons or not.

(6) That since the year, 1933, the City of Avon Park has made a sincere effort to collect taxes and in pursuance of such effort has foreclosed on properties of the tax payers of the City aggregating approximately 10% of the total property within the City. A number of suits have been filed against the City by bondholders and judgments recovered. Other suits are threatened and Petitioner is being harrassed by creditors.

(7) That the City submitted or caused to be submitted to its creditors for acceptance the plan of composition of its debts, to-wit: the plan submitted in these proceedings and which plan is made a part of the Petition filed herein. That prior to the time of the commencement of this proceeding, creditors of said City affected by the said plan composition holding securities of said Petitioner in an amount more than fifty-one percentum (51%) of the amount of its indebtedness, accepted said plan of composition in writing, exclusive of any securities owned, held or controlled by the Petitioner, and that said Petitioner did not and does not own, hold or control any of said securities.

That on the 12th day of July, A. D. 1937, the City Council of the City of Avon Park, Florida, by resolution duly and legally passed, authorized the bringing of these proceedings and in accordance with said plan of composition and also pursuant to authority under and by virtue of Chapter 15878 of the Laws of Florida, 1933, that

on the 23rd day of February, A. D. 1939, the City
221 Council adopted a further resolution, providing for an amendment or change in the plan after such amendment or change in the plan had been approved by order of the United States District Judge.

(8) That said City is insolvent and unable to meet its debts as they mature.

(9) That said bonded indebtedness of said City hereinbefore described is the only portion of its indebtedness to be affected by the plan of composition offered herein.

(10) That each and all of the bonds issued by said City of Avon Park hereinbefore described and affected by the plan of composition are general obligations of said City, and are payble without preference out of funds derived from the same sources, to-wit, ad valorem taxes, and no specific property or revenue is pledged to the payment of said bonds, or any of them.

(11) That any judgments heretofore rendered on said bonds, or interest coupons annexed thereto, or interest on said bonds or interest coupons, are payable without preference out of the said sole source of revenue, to-wit, ad valorem taxes levied by said petitioner, and no specific property or revenue is pledged for the payment of any of said judgments, and therefore the whole of said indebtedness, including said judgments, whether there are writs of mandamus by way of execution thereon or not, constitute part of the same single class of creditors; and that said single class of creditors is the only class of creditors of the petitioner affected by the plan of composition.

(12 That in accordance with the said plan as modified, no amount of money is to be paid by the Petitioner for services or expenses incident to the composition, but the

same are to be paid by the City's Fiscal Agent, R. E. Crummer & Company, out of assessments against bondholders as provided in said plan, as modified, which arrangement is fair and reasonable, and is manifestly to the best interest of the debtor City since it is without
222 the means to meet such expenses; and it is likewise fair and equitable to the participating bondholders because a settlement of the City's financial difficulties will tend to re-establish the value of its outstanding bonds.

(13) That under a peremptory writ of mandamus issued by reason of a judgment obtained against the City of Avon Park by Meredith, Rogers & Martin, a levy was made and taxes collected as a result thereof, which tax money so collected is still held by the City of Avon Park and is to be used in meeting the first year's appropriation for a sinking fund under the refunding plan herein. Any legal right to such fund has been waived by Meredith, Rogers & Martin.

14) That in a judgment obtained against the City of Avon Park by one Lawrence W. Rittenoure, a part of said judgment was represented by notes against the said City in the principal amount of $25,000.00, which notes, or the portion of the judgment represented by said notes, are not included in the refunding plan herein.

(15) That the City of Avon Park, Florida, municipal debtor, is to issue its refunding bonds on the basis of 100% of the par value of the said principal indebtedness outstanding, to-wit, $865,500.00, or refunding bonds are to be issued in the total amount of $865,500.00; said refunding bonds are to be dated as of July 1, 1937 and to mature July 1, 1967 and will bear interest as follows:

2% per annum for a period of two years from the date thereof;

3% per annum for the next succeeding six years;

4% per annum for the next succeeding seven years;

and 5% per annum thereafter.

All unpaid interest indebtedness of the City of Avon Park accrued to July 1, 1937 as provided in the plan shall have deposited evidence of such interest in escrow with the First National Bank of Chicago, Chicago, Illinois, or such other escrow agent as may be approved by
223 the United States District Judge having jurisdiction of the cause, against which escrow the said escrow agent shall issue certificates of deposit in the name of the owners of the equity thereof, said certificates to identify the amount of interest accruals evidenced thereby. Certificates of deposit as aforesaid are to be issued for the full amount of interest accrued up to July 1, 1937 in the aggregate sum of 358,251.76. The plan provides for the adjustment of taxes and special assessment liens of the City and for the retirement of the cetificates of deposit representing accumulated interest as aforesaid under varying percentages, as outlined in the plan.

Said bonds are to provide for the levy and collection of a direct annual tax set out in detail in the said plan and the said bonds having the redemption and callable privileges specifically set out in the plan. Said City will be able to collect such ad valorem taxes to meet all requirements for the payment of said interest on said refunding bonds and certificates as aforesaid and to provide funds for a sinking fund for the retirement thereof, as set out in said plan.

(16) That the said plan of composition treats all of the creditors affected thereby fairly and equitably and there are no other arrangements or agreements giving any of said creditors any right or benefit other than as specified in said plan, and said plan does not disciminate unfairly in favor of any creditor, or class of creditors, and under said plan of composition said creditors will obtain securities and bonds upon which they can collect interest, and said plan is for the best interest of the creditors. It is the opinion of the Special Master from the testimony taken in this cause that the said City after paying its necessary operating expenses, cannot at the present time make any greater or further payment to its bondholders affected by said plan of composition than as specified in said plan.

224 (17) That sixty (60) creditors affected by the said plan of composition have filed their claims herein and that each of said claims has been approved by your Master, as shown by the report of said testimony which by reference is made a part hereof, all of which claims are in proper form in accordance with the order of the Court made herein. That each of said creditors either submitted with said claims the bonds and interest coupons or otherwise satisfactorily complied with the Court's Order concerning the same. That the holders of securities representing more than 66-2/3% of the aggregate amount of claims of all classes affected by the plan have filed consents to the said plan in writing, and proofs of claim thereon, and petitioner has admitted its liability on said claims in said amounts. Approximately 31% of creditors affected by the plan have not filed their written consents thereto and approximately 10% of the total amount of indebtedness of the said City have filed objections to the plan.

(18) That said plan of composition was offered by the said City in good faith and that its acceptance by creditors accepting same is in good faith.

(19) That under the laws of the State of Florida, the City is authorized and empowered to take all action necessary by it to carry out said plan of composition.

CONCLUSIONS OF LAW.

That the Special Master, pursuant to the Order of Court, does now hereby make the following conclusions of law:

(1) That the Court has jurisdiction of these proceedings; that the petitioner is a municipality and City within the meaning of Chapter IX of the Bankruptcy Act of the United States, as amended, and is authorized by the laws of the State of Florida, to-wit, Chapter 15878, Laws of Florida, Acts of 1933, to institute these proceedings; that petitioning City was a municipality at all times
225 when it issued the bonds involved in this plan of composition, and it has the power and authority under and by virtue of the laws of the State of Florida to take all action necessary to be taken by it to carry out the said plan.

(2) That the plan of composition, as modified, and the proceedings had and taken herein comply in all respects with the provisions and requirements of Chapter IX of the Bankruptcy Act of the United States, as amended.

(3) That all of the material allegations of the petition of said City are sustained, and that said City is entitled to the relief prayed for in said petition.

(4) That said plan of composition, as modified, is fair and equitable and for the best interests of the creditors, and does not discriminate unfairly in favor of any creditor, or class of creditors, and complies with the provisions of Chapter IX of the Bankruptcy Act of the United

States, as amended, and has been accepted and approved in writing by and on behalf of the creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by said plan of composition, exclusive of any claims owned, held or controlled by said petitioner; and that all amounts to be paid by petitioner for services or expenses incident to said plan of composition have been fully disclosed, inasmuch as said Petitioner is paying none of said amounts.

(5) That the offer of said plan of composition, as modified, by the said City, and its acceptance by said creditors, are in good faith.

(6) That all objections, motions and pleas filed on behalf of certain dissenting creditors to the plan of composition, as modified, are not well founded, and should be overruled, except that the Motion of Lawrence W. Rittenoure filed with the Special Master on the 22nd day of March, A. D. 1939 should be granted and an Order should be entered amending the injunction heretofore issued insofar as the said injunction stays the en-
226 forcement of the collection of the amount of the notes together with accumulated interest thereon, included in the judgment heretofore obtained against the City of Avon Park by the said Lawrence W. Rittenoure.

(7) That no creditor who has asserted herein a vested right by virtue of such creditor having heretofore procured a final judgment, or alternative writ of mandamus, or peremptory writ of mandamus, has any such vested rights which precludes the operation of the bankruptcy power of Congress thereon, and therefore, such claimants are not to be placed in any other or different class than creditors generally who do not have judgments, alternative writs of mandamus, or peremptory writs of mandamus; and all creditors, whether merely the holders of bonds or coupons,

or whether they have obtained judgments, alternative writs of mandamus, or peremptory writs of mandamus, are of one single class, payable from one and the same source, to-wit, ad valorem taxes levied by the petitioning City of Avon Park, without priority or preference.

SPECIAL MASTER'S NECESSARY EXPENSES AND REASONABLE COMPENSATION.

Your Special Master would further report that the necessary expenses incurred by him in connection with these proceedings, were as follows: Clerical assistance and filing and tabulating claims, $15.00; Clerical assistance in preparing and mailing 123 notices of hearing, together with stationery, etc, $15.70; Postage incident thereto, $3.75; Services of Reporter for two days in taking testimony, $20.00; Travel expense to Orlando, March 22, 1939, $8.00; and Transcribing testimony and copy provided petitioner, $111.30; making a total of $173.75; the sum of $150.00 has been paid by R. E. Crummer & Company to apply on said costs, leaving a balance due of $23.75.

227 Your Special Master further respectfully requests this Honorable Court to fix the amount of his reasonable compensation for services rendered in this case as Special Master.

Recommendations.

It is therefore recommended by your undersigned Special Master that an Interlocutory Decree should be entered herein, confirming and approving the plan of composition of said City of Avon Park, as modified, and authorizing and empowering said City to immediately issue said refunding bonds and certificates of deposit and carry out said plan of composition as provided for in said plan.

Dated this 31st day of March, A. D. 1939.

Respectfully submitted,

ALLEN E. WALKER,

Special Master.

228 Objections to Master's Report was filed April 6, 1939, by Roger W. Babson, copy of said objections being as follows:

OBJECTIONS TO MASTER'S REPORT.

229 (Title Omitted.)

Now comes Roger W. Babson, an objecting creditor in the foregoing cause, by his undersigned attorneys, and files these his objections or exceptions to the Special Master's report in the foregoing cause, to-wit:

I.

This creditor objects or excepts to the allowance of the claims of R. E. Crummer & Company listed as being owned by said Company, upon the following grounds, to-wit:

(a) R. E. Crummer & Company is the fiscal agent of said City and acquired its claims on or about or succeeding the date it was appointed fiscal agent and having thus acquired said claims, the same in law are held or controlled by the petitioner, and should be excluded in computing the percentage of consenting creditors under the terms of the municipal Bankruptcy Act, as amended.

(b) That excluding the listed claims of said fiscal agent, the consenting creditors' claims will amount to approximately 58% of the indebtedness of said City, and

not sufficient under the Statute to confirm the plan of composition.

II.

This creditors objects or excepts to paragraphs 12, 16 and 18 of the Master's findings of fact and paragraphs 2, 4 and 5 of the Master's conclusions of law set forth in said report, upon the following grounds, to-wit:

(a) Said plan of composition discriminates unfairly in favor of one creditor, to-wit: R. E. Crummer & Company, the fiscal agent, in this, other bondholders are penalized $20.00 per original bond for refusing to allow the fiscal agent to speculate on an asset belonging to other
230 bondholders, viz: defaulted interest coupons and interest; and allows the fiscal agent to charge other bondholders $20.00 per bond where defaulted interest is sold to the fiscal agent, as refunding expense, and will allow the fiscal agent to make a 50% cash profit on sale of certificates of deposit or interest refunding bonds to the City, less refunding expense, or approximately $50,000.00 plus $20.000 per original bond during the first six months after confirmation of the plan, by purchasing defaulted interest of approximately $300,000.00 at 33-1/3 cents on the dollar and disposing of same to the City at .50¢ on the dollar during such period; or in the event said City does not purchase such certificates of deposit or interest refunding bonds during the first two years after confirmation of the plan, then said fiscal agent will have a potential profit of approximately 300% or over $200,000.00 plus $20.00 per original bond, less refunding expense.

III.

This creditor objects or excepts to paragraph 11 of the Master's findings of fact and paragraphs 3, 6 and 7 of

the Master's conclusions of law as set forth in said report, upon the following grounds, to-wit:

(a) The proof shows this creditor has heretofore obtained a judgment on bonds in this Court, and two peremptory writs of mandamus have been obtained thereon ordering the City officials to levy and collect taxes to pay such judgment, and levies made pursuant to said writs prior to the filing of the petition in bankruptcy by the City are in part uncollected, and no provision is made in the plan of composition for applying the proceeds of such special levies to the payment of this creditor's judgment; and no provision is made in the plan of composition for refunding said judgment, as such, and said judgment is ignored as a "security" under said plan together with accrued interest on same at 8% per annum.

(b) Said report fails to recognize and allow this creditor's claim as a preferred claim in bankruptcy, and fails to recognize this creditor as constituting a sole
231 and separate class of creditor, who has a lien on an objective or resultant fund to be derived from collections under a special levy made under peremptory writs of mandamus; and fails to recognize this creditor, as a sole class of creditor, whose claim is payable with preference from revenues of the City, specifically and solely pledged to payment of this creditor's judgment under peremptory writs of mandamus.

(c) And fails to recognize that this creditor has a vested right in the amount of said judgment and a vested right in writs of mandamus and resultant revenues to be derived from collection of levies heretofore made pursuant to said peremptory writs of mandamus, for which no provision has been made under the plan of composition.

TOUCHTON & CRITTENDEN.
By H. C. CRITTENDEN,
Attorneys for Roger W. Babson.

State of Florida,
County of Polk.

Personally appeared before me the undersigned authority, H. C. Crittenden, who being by me first duly sworn, upon oath says: that he is of counsel for Roger W. Babson, one of the objecting creditors in the foregoing cause; that he served a true copy of the foregoing objections to the Master's report upon Henry L. Jollay, one of the attorneys of record for the petitioner in the foregoing cause, by placing said copy in an envelope addressed to Henry L. Jollay, attorney-law, Winter Haven, Florida, by securely ensealing said envelope and placing same in the mails at Winter Haven, Florida, on the 5th day of April, 1939, with sufficient postage thereon to insure delivery.

H. C. CRITTENDEN.

Sworn to and subscribed before me this 5th day of April, A. D. 1939.

LOIS HUGHES,
(Seal) Notary Public, State of Florida at Large.

My commission expires May 20, 1939.

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232 On April 10, 1939, Exceptions to the Report of the Special Master was filed, by American United Life Insurance Company and William E. Sweet; copy of said exceptions being as follows:

EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER.

233 (Title Omitted.)

Comes now American United Life Insurance Company, a corporation, and William E. Sweet, creditors of the City

of Avon Park, and file the following exceptions to the report of the Special Master herein filed:

1. The Master erred in holding that more than 66-2/3 per cent of the holders of bonds of the City have consented to the granting of the petition, because testimony affirmatively shows that a large portion of the bonds that purported to consent were owned by the fiscal agent of the City, which purchased them after it had become fiscal agent.

2. The Master erred in permitting the fiscal agent and its affiliated corporation, the Brown-Crummer Investment Company, to file a proof of claim upon bonds and coupons which, by the record, are shown to have been mutilated and destroyed when judgment was obtained upon them in the State or Federal Court.

3. The Master erred in holding that the testimony of the City and its fiscal agent affirmatively shows that the plan is fair and equitable, because it is admitted that the City cannot pay the total indebtedness repre-
234 sented by the face value of the refunding bonds, except by the manipulation of the market price of the same by the City and its fiscal agent.

4. The Master erred in holding that the plan of refunding proposed is a composition which can be confirmed by this Court, as the plan proposed discriminates against the holders of judgments against the City.

5. The Master erred in holding that the plan is fair and equitable to the undersigned creditors, as it is admitted that they are required to surrender judgments which they have obtained at great expense, and must either sell their coupons to the fiscal agent at a price below that

which the City agrees to pay, and in addition, must pay a charge of $20. a bond, or in lieu thereof, pay a charge of $40. a bond in order to retain their coupons.

6. The Master erred in holding that the plan is fair and equitable, for it does not provide the amount of compensation to be awarded to the fiscal agent for its services and expenses, nor has that amount been fixed by the Court, as provided by law.

7. In recommending that the plan of composition be approved, the Master erred, because the plan provides that refunding bonds representing interest coupons will not be issued for a period of two years, and, under the statute, consideration for the composition must be delivered to the Court and distributed among the creditors.

8. The Master erred in holding that the plan was fair and equitable and offered in good faith, because
235 the evidence conclusively shows that the plan discriminates in favor of the fiscal agent.

9. The Master erred in holding that the plan was fair and equitable and offered in good faith, because the testimony conclusively shows that the fiscal agent will be the principal beneficiary of the plan, from the profits that will insure to it upon the obligations of the City which it purchased at a great discount after it had entered into a contract of agency with the City.

10. The Master erred in holding the plan fair and equitable, because the refunding plan does not authorize the fiscal agent to purchase obligations of the City for its own profit after it became agent, and neither the plan nor the petition disclosed that the fiscal agent was the principal creditor, the amount of bonds which had been purchased, nor the price or prices at which it ac-

quired its bonds, nor when it acquired them, nor that the coupons owned were acquired by it without cost.

11. The Master erred in holding that the City was acting in good faith, because it appears from the uncontradicted evidence that the fiscal agent purchased judgments against the City to prevent the holders from objecting to the plan, and the City made a special tax levy for the benefit of the fiscal agent, and, at the same time, deliberately ignored the peremptory writs which had been issued by this Court in favor of these creditors.

12. The Master erred in holding that under the plan the proceeds of the special tax levy made by the City,
as a result of collusion with the fiscal agent, will
236 be used for the benefit of all creditors, in that
neither the petition nor the plan provides for the same.

13. The Master erred in not holding that the plan of composition violates the Act of Bankruptcy, because the testimony shows that the City has in its possession a fund of money, the amount of which is undisclosed, (and the existence of which was undisclosed prior to the taking of testimony) which has resulted from a special levy made by the City for the fiscal agent in response to a writ issued with the consent of the City at a time when the City was deliberately refusing to comply with the writs of mandamus which had been procured by these and other creditors.

14. The Master erred in holding that these defendants should be compelled to accept a plan of composition which seeks to deprive them of the rights that had become vested before the filing of the petition under judgments and peremptory writs of mandamus which they had obtained to enforce such judgments.

15. The Master erred in holding that the claims of creditors based upon judgments supported by writs of mandamus, are in the same class with claims of creditors which have not been reduced to judgments.

16. The Master erred in holding that the plan of composition was fair and equitable and offered in good faith, because the testimony conclusively proves that the plan was prepared by the fiscal agent, that the City officials had no understanding of its terms, and that the fiscal agent was carrying out the plan while it was acting as agent for bondholders, as agent for the City, and as principal creditor of the City.

237 17. The Master erred in recommending that the Court confirm the plan of composition, because the evidence conclusively proves all of the allegations of the answer of these defendants, and the amendment thereto.

18. The Master erred in finding that the composition was for either the best interests of the City or of the creditors, because the undisputed testimony shows that the City will be unable to pay the refunding bonds at their face value, and that the increased amount of bonds to be issued by the City, due to refunding at par of the bonds and coupons purchased by the fiscal agent at greatly reduced prices, will offset the saving of interest which would otherwise accrue to the City by the reduced rate provided on the refunding bonds.

19. The Master erred in holding that the City has power to carry out the plan of composition, because it has no power to bind itself to carry out the plan for the settlement of coupons.

20. The Master erred in holding that the plan of composition complies with the statute, because it creates two classes of creditors, one which elects not to sell their interest claims, and the other which does, and discriminates between the classes by charging twice as much compensation to the former class.

21. The Master erred in holding that the plan was prepared in good faith and was fair and equitable, because the testimony indicates that it was the result of collusion between the City and the fiscal agent, to enable the
fiscal agent to profit by the manipulation of
238 the market value of the securities of the town.

22. The Master erred in holding that the plan conforms to the requirements of the statute, because it appears that some of the bonds now outstanding were secured by the pledge of special assessment liens, and each of these issues constitute a class, and it does not appear that the City has the consent of two-thirds of each of said issues.

GILES J. PATTERSON,
Attorney for American United
Life Insurance Company,
and William E. Sweet.

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239 On June 19, 1939, Notice of Hearing on Motion for Decree confirming the Plan of Compensation was filed; copy thereof is omitted.

On June 19, 1939, Motion for Decree confirming Plan of Composition was filed; copy thereof is omitted.

On June 19, 1939, Interlocutory Decree was filed; copy of said decree being as follows:

240 INTERLOCUTORY DECREE.

In the District Court of the United States, In and for the Southern District of Florida, Tampa Division.

No. 3088-T-Bankruptcy.

In the Matter of: City of Avon Park, Florida, Debtor.

In Proceedings for Composition of Debts Under Sections 81, 82, 83 and 84, of Chapter IX, of the Acts of Congress Relating to Bankruptcy.

This cause coming on for further hearing upon the verified Petition for Composition of Debts filed herein by the City of Avon Park, Florida, and upon the modifications thereto heretofore allowed to be filed herein pursuant to prior order of this Court under date of February 28, 1939, and upon the objections of certain creditors to the said plan of composition and to the plan of composition as modified, and upon the motion of petitioner for the entry of an interlocutory decree confirming said plan as modified, and upon the report of the Special Master herein, and the Court having considered this cause, the pleadings therein, the objections of said creditors, and the report of the said Special Master, and having heard counsel for petitioner and for said objecting creditors, and being fully advised in the premises,

It is thereupon Ordered, Adjudged and Decreed as follows:

I.

That the Court does hereby make the following findings of fact:

(1) That the petitioner, City of Avon Park, Florida, is a municipality under and by virtue of the laws of the State of Florida, situated in Highlands County, Florida, within the territorial jurisdiction of this Court, and that it was a duly constituted municipality at all times during which the bond issues affected by the plan of
241 composition involved in this proceeding were made and issued, and that it is such a municipality as comes within the terms and provisions of Chapter IX of the Bankruptcy Act of the United States, as amended.

(2) That the petitioner, City of Avon Park, Florida, is a municipality or taxing district within the meaning of the said terms, as used in Chapter 15,878, Laws of Florida, Acts of 1938, conferring upon municipalities, taxing districts and political subdivisions of the State of Florida power and authority to institute proceedings and accept the benefits of any amendments to the bankruptcy laws of the United States enacted for the relief of municipalities, taxing districts and political subdivisions.

(3) That the municipal debtor, City of Avon Park, Florida, mailed and published all notices as required by the Order of the Court entered on the 15th day of August, 1938, and filed proper certificates thereof.

(4) That said City now has and has had for several years last past a population of approximately 3500, of which approximately 600 are colored people; that the City has a limited amount of industry or business, and that since the year 1925 there has been a decline in

business; that all the banks within said City failed prior to 1930 and business conditions have been seriously affected in the City thereby; that the assessed valuation of property within the said City as presently constituted, subject to taxation, amounts to $2,504,087.00, being the assessed valuation for the year 1937, no later valuation being given in the testimony; that the assessed valuation of property within the City of Avon Park for the year 1926 was $6,536,256. and valuations had declined from that time to the year 1937, to the sum of $2,504,087.00; and over a long period of years the City has been able to collect only approximately 40% of the total taxes levied by the City.

5. That the aggregate amount of bonded indebtedness and interest thereon to July 1, 1937 to be affected by the plan is as shown in Section 1 of the Plan of Composition of the City of Avon Park, Florida, as modified, and aggregates the sum of $865,500.00 prin-
242 cipal, and $358,251.76 interest accrued thereon to July 1, 1937, whether represented by coupons or not.

(6) That since the year 1933 the City of Avon Park has made a sincere effort to collect taxes and in pursuant of such effort has foreclosed on properties of the taxpayers of the City aggregating approximately 10% of the total property within the City. A number of suits have been filed against the City by bondholders and judgments recovered. Other suits are threatened and petitioner is being harassed by creditors.

(7) That the City submitted or caused to be submitted to its creditors for acceptance the plan of composition of its debts, to-wit, the plan submitted in these proceedings and which plan is made a part of the petition filed herein. That prior to the time of the commence-

ment of this proceeding, creditors of said City affected by the said plan of composition holding securities of said petitioner in an amount more than fifty-one per centum (51%) of the amount of its indebtedness, accepted said plan of composition in writing, exclusive of any securities owned, held or controlled by the petitioner, and that said petitioner did not and does not own, hold or control any of said securities.

That on the 12th day of July, A. D. 1937, the City Council of the City of Avon Park, Florida, by resolution duly and legally passed, authorized the bringing of these proceedings, in accordance with said plan of composition and also pursuant to authority under and by virtue of Chapter 15,878 of the Laws of Florida of 1933; that on the 23rd day of January, A. D. 1939, the City Council adopted a further resolution, providing for an amendment or change in the plan after such amendment or change in the plan had been approved by order of the United States District Judge.

(8) That said City is insolvent and unable to meet its debts as they mature.

(9) That said bonded indebtedness of said City hereinbefore described is the only portion of its indebtedness to be affected by the plan of composition offered herein.

(10) That each and all of the bonds issued by said City of Avon Park hereinbefore described and
243 affected by the plan of composition are general obligations of said City, and are payable without preference out of funds derived from the same source, to-wit, ad valorem taxes, and no specific property or revenue is pledged to the payment of said bonds, or any of them.

(11) That any judgments heretofore rendered on said bonds, or interest coupons annexed thereto, or interest on said bonds or interest coupons, are payable without preference out of the said sole source of revenue, to-wit, ad valorem taxes levied by said petitioner, and no specific property or revenue is pledged for the payment of any of said judgments, and therefore the whole of said indebtedness, including said judgments, whether there are writs of mandamus by way of execution thereon or not, constitute part of the same single class of creditors, and that said single class of creditors is the only class of creditors of the petitioner affected by the plan of composition.

(12) That in accordance with the said plan as modified, no amount of money is to be paid by the petitioner for services or expenses incident to the composition, but the same are to be paid by the City's Fiscal Agent, R. E. Crummer & Company, out of assessments against bondholders as provided in said plan, as modified, which arrangement is fair and reasonable, and is manifestly to the best interest of the debtor City since it is without the means to meet such expenses; and it is likewise fair and equitable to the participating bondholders because a settlement of the City's financial difficulties will tend to re-establish the value of its outstanding bonds.

(13) That under a peremptory writ of mandamus issued by reason of a judgment obtained against the City of Avon Park by Meredith, Rogers & Martin a levy was made and taxes collected as a result thereof, which tax money so collected is still held by the City of Avon Park and is to be used in meeting the first year's appropriation for a sinking fund under the refunding plan herein. Any legal right to such fund has been waived by Meredith, Rogers & Martin.

(14) That in a judgment obtained against the City of Avon Park by one Lawrence W. Rittenoure, a
244 part of said judgment was represented by notes against the said City in the principal amount of $25,000.00, which notes, or the portion of the judgment represented by said notes, are not included in the refunding plan herein.

(15) That the City of Avon Park, Florida, municipal debtor, is to issue its refunding bonds on the basis of 100% of the par value of the said principal indebtedness outstanding, to-wit, $865,500.00, or refunding bonds are to be issued in the total amount of $865,500.00; said refunding bonds are to be dated as of July 1, 1937, and to mature July 1, 1967, and will bear interest as follows:

2% per annum for a period of two years from the date thereof;

3% per annum for the next succeeding six years;

4% per annum for the next succeeding seven years; and

5% per annum thereafter.

All unpaid interest indebtedness of the City of Avon Park accrued to July 1, 1937, as provided in the plan, shall have deposited evidence of such interest in escrow with the First National Bank of Chicago, Chicago, Illinois, or such other escrow agent as may be approved by the United States District Judge having jurisdiction of the cause, against which escrow the said escrow agent shall issue certificates of deposit in the name of the owners of the equity thereof, said certificates to identify the amount of interest accruals evidenced thereby. Certificates of deposit as aforesaid are to be issued for the full

amount of interest accrued up to July 1, 1937, in the aggregate sum of $358,251.76. The plan provides for the adjustment of taxes and special assessment liens of the City and for the retirement of the certificates of deposit accumulated interest as aforesaid under varying percentages, as outlined in the plan.

Said bonds are to provide for the levy and collection of a direct annual tax debt set out in detail in the said plan, and the said bonds to have the redemption and callable privileges specifically set out in the plan. Said City will be able to collect such ad valorem taxes to meet all requirements for the payment of said interest
245 on said refunding bonds and certificates as aforesaid and to provide funds for a sinking fund for the retirement thereof, as set out in said plan.

(16) That the said plan of composition treats all of the creditors affected thereby fairly and equitably, and there are no other arrangements or agreements giving any of said creditors any right or benefit other than as specified in said plan, and said plan does not discriminate unfairly in favor of any creditor, or class of creditors, and under said plan of composition said creditors will obtain securities and bonds upon which they can collect interest, and said plan is for the best interest of the creditors. It is the opinion of the Special Master from the testimony taken in this cause that the said City, after paying its necessary operating expenses, cannot at the present time make any greater or further payment to its bondholders affected by said plan of composition than as specified in said plan.

(17) That sixty (60) creditors affected by said plan of composition have filed their claims herein, and that each of said claims has been approved by your Master, as shown by the report of said testimony by which reference is made a part hereof, all of which claims are in

proper form in accordance with the order of the Court made herein. That each of said creditors either submitted with said claims the bonds and interest coupons, or otherwise satisfactorily complied with the Court's order concerning the same. That the holders of securities representing more than 66-2/3% of the aggregate amount of claims of all classes affected by the plan have filed consents to the said plan in writing, and proofs of claim thereon, and petitioner has admitted its liability on said claims in said amounts. That approximately 31% of creditors affected by the plan have not filed their written consents thereto, and approximately 10% of the total amount of indebtedness of said City have filed objections to the plan.

(18) That said plan of composition was offered by said City in good faith, and that its acceptance by creditors accepting same is in good faith.

19. That under the laws of the State of Florida, the City is authorized and empowered to take all
246 action necessary by it to carry out said plan of composition.

II.

That the Court does now hereby make the following conclusions of law:

(1) That the Court has jurisdiction of these proceedings; that the petitioner is a municipality and city within the meaning of Chapter IX of the Bankruptcy Act of the United States, as amended, and is authorized by the laws of the State of Florida, to-wit, Chapter 15,878, Laws of Florida, Acts of 1933, to institute these proceedings; that the petitioning City was a municipality at all times when it issued the bonds involved in this plan of composi-

tion, and it has the power and authority under and by virtue of the laws of the State of Florida to take all action necessary to be taken by it to carry out the said plan.

(2) That the plan of composition, as modified, and the proceedings had and taken herein, comply in all respects with the provisions and requirements of Chapter IX of the Bankruptcy Act of the United States, as amended.

(3) That all of the material allegations of the petition of said City are sustained, and that said City is entitled to the relief prayed for in said petition.

(4) That said plan of composition, as modified, is fair and equitable and for the best interests of the creditors, and does not discriminate unfairly in favor of any creditor, or class of creditors, and complies with the provisions of Chapter IX of the Bankruptcy Act of the United States, as amended, and has been accepted and approved in writing by and on behalf of the creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by said plan of composition, exclusive of any claims owned, held or controlled by petitioner; and that all amounts to be paid by petitioner for services or expenses incident to said plan of composition have been fully disclosed, inasmuch as said petitioner is paying none of said amounts.

247 (5) That the offer of said plan of composition, as modified, by the said City, and its acceptance by said creditors, are in good faith.

(6) That all objections, motions and pleas filed on behalf of certain dissenting creditors to the plan of composition, as modified, are not well founded, and should be overruled, except that the motion of Lawrence W.

Rittenoure filed with the Special Master on the 22nd day of March, A. D. 1939, should be granted, and an order should be entered amending the injunction heretofore issued in so far as the said injunction says the enforcement of the collection of the amount of the notes, together with accumulated interest thereon, included in the judgment heretofore obtained against the City of Avon Park by the said Lawrence W. Rittenoure.

(7) That no creditor who has asserted herein a vested right by virtue of such creditor having heretofore procured a final judgment, or alternative writ of mandamus, or peremptory writ of mandamus, has any such vested rights as preclude the operation of the bankruptcy power of Congress thereon, and therefore, such claimants are not to be placed in any other or different class than creditors generally who do not have judgments, alternative writs of mandamus, or peremptory writs of mandamus; and all creditors, whether merely the holders of bonds or coupons, or whether they have obtained judgments, alternative writs of mandamus or peremptory writs of mandamus are of one single class, payable from one and the same source, to-wit, ad valorem taxes levied by the petitioning City of Avon Park, without priority or preference.

III.

The Court does now, therefore, hereby Order, Adjudge and Decree as follows:

(1) That the plan of composition, as modified, filed herein by petitioner, for composition of its debts under Chapter IX of the Bankruptcy Act of the United States, as amended, be and the same is hereby in all respects confirmed and approved.

(2) That said plan of composition, as modified, is fair, equitable, and for the best interests of the creditors, and does not discriminate unfairly in favor of any creditor, or class of creditors.

(3) That said plan of composition, as modified, has been accepted and approved, as required by the
248 provisions of subdivision (d) of Section 83, of Chapter IX, of the Bankruptcy Act of the United States, as amended, by having been accepted in writing by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by said plan, as modified, and which have been admitted by petitioner.

(4) That the petitioner is not required to pay any amount of money for services or expenses incident to the composition.

(5) That the offer of said plan of composition, as modified, and its acceptance, are in good faith.

(6) That the petitioner is authorized by law to take all action necessary to be taken by it to carry out the said plan as so modified.

(7) That each and every, the objections to said plan of composition and to the plan of composition as so modified, be and the same are hereby overruled.

(8) That each and every, the claims of vested rights heretofore filed herein on behalf of certain dissenting creditors be and the same are hereby severally disapproved and disallowed; and no creditor herein has any vested right by virtue of having heretofore procured a final judgment or alternative writ of mandamus, or peremptory writ of mandamus, based upon any of the securi-

ties affected by the plan of composition, as so modified, and all creditors of said City holding securities affected by said plan, regardless of whether said securities are evidenced by judgments, or whether said creditors have procured alternative writs of mandamus, or peremptory writs of mandamus, to enforce said judgments or said securities, be and they are hereby decreed to belong to one and the same class, payable without preference out of funds derived from the single and sole source of ad valorem taxes levied by the petitioning City.

(9) That all persons, firms or corporations having or holding judgments, writs of mandamus, or decrees of any nature or kind against petitioner, and the respective attorneys, agents, servants, employees and/or successors in interest of such persons, firms or corporations, be and they are hereby severally and separately enjoined from continuing against petitioner, City of Avon Park,
249 Florida, any suit whatsoever heretofore instituted by them, or any of them, or from instituting any suit, action or proceeding against petitioner, City of Avon Park, in any manner involving any securities or judgments, or execution thereon, embraced within the said plan of composition as modified, or embraced within any of their respective claims of vested rights, or to enforce any lien, or to enforce the levy of taxes or assessments for the payment of obligations under any such securities or judgments, or execution thereon, or any suit or process to levy upon or enforce against any property acquired by petitioner through foreclosure of any tax or special assessment lien, and from instituting, taking or continuing any proceeding of any kind, including contempt proceedings under or to enforce any peremptory writ of mandamus or proceeding brought to obtain such writ; and petitioner and its officials are hereby relieved of the necessity or duty of complying with any such peremptory writ of mandamus; and said creditors hereinabove enum-

erated are hereby decreed to be in the same class with all other creditors holding any securities affected by said plan of composition as modified; and upon final decree herein, shall be bound thereby in the same manner as all other creditors affected by said plan of composition as modified; provided, however, that the plaintiff in, or the owner of, that certain final judgment obtained by Lawrence W. Rittenoure, as plaintiff in that certain cause lately pending in this Court against petitioner, City of Avon Park, which said judgment was rendered on or about June 1, 1936, and modified on or about January 6, 1938, may enforce said judgment to the extent only that the notes of the City of Avon Park dated December 1, 1927, are included in said judgment, and the interest thereon, and pursuant to the law under which said notes were issued; and the injunction heretofore granted petitioner against the enforcement of said judgment is hereby dissolved and set aside in so far as it prevents the enforcement of said notes dated December 1, 1927, and the interest thereon, included in said judgment, but no further, the said notes not being included in or affected by the plan of composition herein.

(10) That all moneys in the hands of petitioner realized under a certain peremptory writ of mandamus
250 issued against petitioner in that certain cause lately pending in the Tenth Judicial Circuit in and for Highlands County, Florida, wherein the State of Florida ex rel. W. J. Meredith, L. F. Rogers and James G. Martin, were relators, and the City of Avon Park, et al., were respondents, shall be made available and used in meeting the first year's appropriation for the interest and sinking fund for the bonds to be issued under the refunding plan herein, inasmuch as the said Meredith, Rogers and Martin have, by and through these proceedings, voluntarily waived any right to collect the said moneys so realized.

(11) That the First National Bank of Chicago, Chicago, Illinois, be and it is hereby named the Exchange Agent and Escrow Agent, to perform all duties appertaining to such agencies in connection with the said plan of composition as modified.

(12) That the petitioner, City of Avon Park, be and it is hereby authorized and directed forthwith to begin and carry through to a conclusion within six months from the date hereof, or within such further time as the Court may allow, all acts to be performed by it in connection with the consummation of said plan of composition as modified, and to take such further steps and do such further acts as shall be necessary and appropriate to carry out in good faith the said plan of composition as modified, embodied in these proceedings.

(13) That pending the delivery of the new securities under the plan of composition as modified, and under this order, and pending the entry of a final decree herein, all persons, firms and corporations be and they are hereby enjoined from collecting and enforcing, or attempting to collect or enforce, any claim or claims against said City of Avon Park on account of any of the securities affected by the plan of composition, including judgments thereon, and that they be and are hereby further enjoined from prosecuting any suit or suits at law or in equity, based upon such bonds or coupons, including judgments thereon, or interest thereon, and from commencing any suits by way of mandamus, or otherwise, against the City of Avon Park on account of any such securities or judgments thereon.

(14) That each and every, the known creditors of the City of Avon Park, as disclosed by the proceedings
251 thus far, have duly and properly been notified in compliance with prior order of this Court entered

herein on August 15, 1938, as shown by affidavit of the City Clerk of the City of Avon Park, and the form, manner and method of giving such notice and the validity thereof, are hereby approved and confirmed.

(15) That Honorable Allen E. Walker, Special Master, heretofore appointed herein, be and he is hereby allowed the sum of $2000.00 as reasonable compensation for his services and expenses incurred in and about his duties as such Special Master, which said sum shall be paid by the City's Fiscal Agent, R. E. Crummer & Company, within 15 days from the date hereof.

(16) That this Court hereby expressly retains jurisdiction herein to supervise the consummation of said plan of composition as modified, including among other things, the delivery of the new refunding bonds and the certificates of deposit, and the distribution thereof by the depositary, and for the purpose of entering a final decree herein, together with such injunctional orders as may be necessary to make such plan of composition as modified, fully effective when consummated.

Done and Ordered in Chambers at Jacksonville, Florida, this 19th day of June, A. D. 1939.

(s) ALEXANDER AKERMAN,
U. S. District Judge.

On the 18th day of July, Notice of Appeal was filed by the American United Life Insurance Company
252 and William E. Sweet, and Attorneys for L. W. Rittenoure; copy of said notice being as follows:

253 NOTICE.

In the United States District Court in and for the Southern District of Florida, Tampa Division.

No. 3088-T-Bankruptcy.

In the Matter of: City of Avon Park, Florida, Debtor.

Notice is hereby given that American United Mutual Life Insurance Company, a corporation organized under the Laws of Indiana, William E. Sweet, of Colorado, and L. W. Rittenoure, of Kansas, each a creditor of the Petitioner in this proceeding, hereby jointly and severally appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the Interlocutory Decree entered herein June 19, 1939.

GILES J. PATTERSON,
Attorney for American United Mutual Life Insurance Company and William E. Sweet.
PHILLIPS & THOMPSON,
Attorneys for L. W. Rittenoure.

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254 On July 18, 1939, the Appellants filed their Cost Bond; copy thereof is omitted.

On August 28th, 1939, there was filed Order extending time within which to file the record on appeal; copy of said order being as follows:

255 (Title Omitted.)

This matter coming on, on request of the appellant, for additional time within which to file the record on appeal in said cause with the Circuit Court of Appeals

for the Fifth Circuit, it is hereby ordered that the time for filing said record on appeal and docketing the said action be and the same hereby is extended, and appellant shall file the same with the Clerk of the Circuit Court of Appeals for the Fifth Circuit on or before the 25th day of September, 1939.

Done and Ordered at Jacksonville, Florida, August 27th, 1939.

LOUIE H. STRUM,
Judge.

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256 On the 15th day of September, 1939 Appellants filed Designation of Contents of Record on Appeal, copy of said Designation being in words and form as follows:

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

257 (Title Omitted.)

Come now Appellants and file this their designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal:

The Clerk of the above-styled Court is requested, pursuant to law, to prepare a transcript of record for appeal to the Circuit Court of Appeals for the Fifth Circuit, sitting at the City of New Orleans, in the State of Louisiana, and in the preparation thereof to be governed by the following designation:

1. Recite the date of filing, and copy in full the original petition of the City of Avon Park filed August 15th, 1938, together with Exhibits A, B, C and D1. Recite that consents similar to Exhibit D1 were filed by other creditors as listed in the petition, and were attached thereto.

2. Recite the fact that the Court approved the Plan of Composition and appointed a Special Master by order dated August 15, 1938, filed August 15, 1938, but omit copy of said order.

3. Recite the date of filing, but omit certificate of publication and mailing of notices filed September 23, 1938.

4. Recite date of filing, and copy in full the petition for stay order filed by the City of Avon Park October 8, 1938.

5. Recite date of filing, but omit notice of hearing filed October 7, 1938.

258 6. Recite date of filing, but omit petition of Roger W. Babson to vacate stay order filed October 14, 1938.

7. Recite date of filing, but omit objections and exceptions of Lawrence W. Rittenoure filed October 17, 1938.

8. Recite date of filing, but omit stipulation filed October 22, 1938.

9. Recite date of filing, and copy in full, stay order dated October 17, 1938.

10. Recite date of filing, but omit objection of M. M. Smith, C. C. Smith, and R. O. Smith, filed October 24, 1938.

11. Recite date of filing, and copy in full, motion to dismiss petition and answer of respondent creditor, Lawrence W. Rittenoure filed October 26, 1938.

12. Recite date of filing, and copy in full answer of William E. Sweet and American United Life Insurance Company filed October 26, 1938.

13. Recite date of filing, but omit report of Special Master filed October 31, 1938.

14. Recite date of filing, but omit motion of City of Avon Park filed October 31, 1938.

15. Recite date of filing, but omit order dated October 31, 1938 filed October 31, 1938.

16. Recite date of filing, but omit motion of Roger N. Babson to file amendment filed November 17, 1938.

17. Recite date of filing, and copy in full, amended answer of William E. Sweet and American United Life Insurance Company filed November 21, 1938.

18. Recite date of filing, but omit motion of Lawrence W. Rittenoure for leave to file amended answer, filed November 21, 1938.

19. Recite date of filing, but omit motion of William E. Sweet and American United Life Insurance Company for leave to amend answer filed November 21, 1938.

20. Recite date of filing, and copy in full amendment to answer of Lawrence W. Rittenoure filed November 21, 1938.

21. Recite date of filing, but omit order dated November 21, 1938 granting motion of William E. Sweet and American United Life Insurance Company to file amended answer, filed November 21, 1938.

259 22. Recite date of filing, but omit order granting motion of Lawrence W. Rittenoure for leave to file amended answer, said order being dated November 21, 1938 and filed November 21, 1938.

23. Recite date of filing, but omit petition of City of Avon Park filed November 28, 1938.

24. Recite date of filing, but omit motion of City of Avon Park for extension of time, filed November 30, 1938.

25. Recite date of filing, but omit order dated November 28, 1938, filed November 28, 1938.

26. Recite date of filing, but omit order dated November 30th, 1938, filed November 30, 1938.

27. Recite date of filing, but omit supplemental report of Special Master filed January 3, 1939.

28. Recite date of filing, but omit order of Court dated December 29, 1938, filed December 29, 1938.

29. Recite date of filing, but omit motion of City of Avon Park for extension of time, filed January 3, 1939.

30. Recite date of filing, but omit order extending time, dated February 3, 1939, filed February 3, 1939.

31. Recite date of filing, but omit affidavit of mailing notices filed March 3, 1939.

32. Recite date of filing, but omit motion of William E. Sweet and American United Life Insurance Company filed March 18, 1939.

33. Recite date of filing, and copy in full, petition of City of Avon Park submitting modifications of Plan of Composition, filed February 28, 1939.

34. Recite date of filing, and copy in full, order dated February 28, 1939 permitting filing of modified Plan of Composition, filed February 28, 1939.

35. Recite date of filing, and copy in full, testimony in question and answer form, filed March 31, 1939, but do not include exhibits.

36. Recite date of filing, and copy in full, Special Master's report filed March 31, 1939.

37. Recite date of filing, and copy in full, objections of Roger W. Babson to Master's report, filed April 6, 1939.

38. Recite date of filing, and copy in full, exceptions of American United Life Insurance Company and William E. Sweet to the report of the Special Master, filed April 10, 1939.

260 39. Recite date of filing, but omit notice filed June 19, 1939.

40. Recite date of filing, but omit motion for interlocutory decree confirming Plan of Composition as modified, filed June 19, 1939.

41. Recite date of filing, and copy in full, interlocutory decree dated June 19, 1939, filed June 19, 1939.

42. Recite date of filing, and copy in full, Notice of Appeal.

43. Recite date of filing but omit copy of cost bond.

44. Recite date of filing, and copy in full, Order of Louie W. Strum extending time for filing record on appeal to September 25, 1939.

45. Recite date of filing, and copy in full, this designation.

46. Recite date of filing, and copy in full, Statement of Points on which Appellants intend to Rely on the Appeal.

47. Recite date of filing, and copy in full, order of Louie W. Strum extending time to October 13th to file record and dockets of said cause in the Circuit Court of Appeals.

GILES J. PATTERSON,
Attorney for American United Life Insurance Company and William E. Sweet.
PHILLIPS & THOMPSON,
Attorney for Lawrence W. Rittenoure.

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261 On the 15th day of September, 1939, Appellants filed Statement of Points on which they

intend to rely on the appeal, said statement being in words and form as follows:

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY ON THE APPEAL.

262 (Title Omitted.)

The Appellants intend to rely upon the contention that the United States District Court for the Southern District of Florida, erred:

First.

In entering the interlocutory decree dated June 19, 1939, filed June 19, 1939.

Second.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the first exception of the American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that more than 66-2/3 per cent of the holders of bonds of the City have consented to the granting of the petition, because testimony affirmatively shows that a large portion of the bonds that purported to consent were owned by the fiscal agent of the City, which purchased them after it had become fiscal agent."

263 Third.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the second exception of

American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in permitting the fiscal agent and its affiliated corporation, the Brown-Crummer Investment Company, to file a proof of claim upon bonds and coupons which, by the record, are shown to have been mutilated and destroyed when judgment was obtained upon them in the State or Federal Court."

Fourth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the third exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the testimony of the City and its fiscal agent affirmatively shows that the plan is fair and equitable, because it is admitted that the City cannot pay the total indebtedness represented by the face value of the refunding bonds, except by the manipulation of the market price of the same by the City and its fiscal agents."

Fifth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the sixth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the plan is fair and equitable, for it does not provide the amount of compensa-

tion to be awarded to the fiscal agent for its services and expenses, nor has that amount been fixed by the Court, as provided by law."

264 Sixth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the seventh exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"In recommending that the plan of composition be approved, the Master erred, because the plan provides that refunding bonds representing interest coupons will not be issued for a period of two years, and, under the statute, consideration for the composition must be delivered to the Court and distributed among the creditors."

Seventh.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the tenth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding the plan fair and equitable, because the refunding plan does not authorize the fiscal agent to purchase obligations of the City for its own profit after it became agent, and neither the plan nor the petition disclosed that the fiscal agent was the principal creditor, the amount of bonds which had been purchased, nor the price or prices at which it acquired its bonds, nor when it acquired them, nor that the coupons owned were acquired by it without cost."

Eighth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the eleventh exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

265 "The Master erred in holding that the City was acting in good faith, because it appears from the uncontradicted evidence that the fiscal agent purchased judgments against the City to prevent the holders from objecting to the plan, and the City made a special tax levy for the benefit of the fiscal agent, and, at the same time, deliberately ignored the peremptory writs which had been issued by this Court in favor of these creditors."

Ninth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the eighteenth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in finding that the composition was for either the best interests of the City or of the creditors, because the undisputed testimony shows that the City will be unable to pay the refunding bonds at their face value, and that the increased amount of bonds to be issued by the City, due to refunding at par of the bonds and coupons purchased by the fiscal agent at greatly reduced prices, will offset the saving of interest which would otherwise accrue to the City for the reduced rate provided on the refunding bonds."

Tenth.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the nineteenth exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the City has power to carry out the plan of composition, because it has no power to bind itself to carry out the plan for the settlement of coupons."

266 Eleventh.

In entering its interlocutory decree dated June 19, 1939, and thereby refusing to sustain the twenty second exception of American United Life Insurance Company and William E. Sweet to the Report of the Special Master, said exception being as follows:

"The Master erred in holding that the plan conforms to the requirements of the statute, because it appears that some of the bonds now outstanding were secured by the pledge of special assessment liens, and each of these issues constitute a class, and it does not appear that the City has the consent of two-thirds of each of said issues."

GILES J. PATTERSON,
PHILLIPS & THOMPSON,
Attorney for Appellants.

267 State of Florida,
County of Duval. ss.

Personally appeared before me, John W. Donahoo, who first being duly sworn, deposes and says that he is attorney at law associated with Giles J. Patterson, that he served the foregoing attached Designation of Contents of Record

on Appeal upon Robert J. Pleus, Attorney at Law, First National Bank Building, Orlando, Florida, and T. A. McNicholas, Attorney at Law, Avon Park, Florida, as attorneys for the City of Avon Park, Florida, by mailing copy of the described paper to the respective above named attorneys, by depositing the same in a sealed envelope addressed to the said attorneys with sufficient postage thereon to insure their arrival at the address, and depositing said sealed envelope in the United States Mail Chute in the Florida National Bank Building, Jacksonville, Florida, at 5:15 P. M. on the 14th day of September, 1939.

(Sgd.) JOHN W. DONAHOO.

Sworn to and subscribed before me this 14 day of September, A. D. 1939.

M. L. TULLIS.

My Commission expires 9/15/40.

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268 On the 14th day of September, 1939, Order was filed extending time to October 10th within which to file the record on appeal, said order being in word and form as follows:

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL.

269 (Title Omitted.)

This cause coming on on request of the appellant for additional time within which to file the record for appeal in said cause with the Circuit Court of Appeals for the Fifth Circuit, and it appearing from the record in this

cause that Notice of Appeal was filed in this cause on July 18, 1939, and that this Court has heretofore extended time for filing of said record to September 25, 1939, and the Court being advised that preparation of the record cannot be completed by said date of September 25, 1939.

It is Thereupon Ordered, Adjudged and Decreed that the time for filing said record on Appeal and docketing of said action be and the same is hereby extended, and the appellant shall have to and including the 10th day of October, 1939, within which to file the record on appeal and docket said action.

Done and Ordered at Jacksonville this 14th day of September, 1939.

LOUIE W. STRUM,
United States District Judge.

270 United States of America,
Southern District of Florida.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the above and foregoing typewritten pages numbered One to Two Hundred and Sixty-nine (269) are a full, true and correct copy of the proceedings had in the matter of City of Avon Park, Florida, Debtor, prepared in accordance with the directions filed by the attorneys for the respective parties hereto, of the originals as the same appears in the files and records of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Tampa, Florida, this 19th day of September, A. D. 1939.

EDWIN R. WILLIAMS, Clerk,

(Seal) By NETTIE TIDWELL,
Deputy Clerk.

[fol. 267] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 23rd, 1940

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors,

versus

CITY OF AVON PARK, FLORIDA, Debtor

On this day this cause was called, and, after argument by Robert J. Pleus, Esq., for appellee, was submitted to the Court.

[fol. 268] OPINION OF THE COURT—Filed January 31, 1940

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors, Appellants,

versus

CITY OF AVON PARK, FLORIDA, Debtor, Appellee

Appeal from the District Court of the United States for the Southern District of Florida

(January 31, 1940)

Before Hutcheson, Holmes and McCord, Circuit Judges

Per CURIAM:

There being no substantial distinction between this case and that presented in Vallette vs. City of Vero Beach, 104 [fol. 269] Fed. (2d) 59, the order appealed from is affirmed, upon the authority of that case.

Affirmed.

[fol. 270] JUDGMENT

Extract from the Minutes of January 31, 1940

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors,

versus

CITY OF AVON PARK, FLORIDA, Debtor

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, American United Mutual Life Insurance Company, and others, Creditors, and the surety or sureties on the appeal bond herein, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 271] IN THE UNITED STATES CIRCUIT COURT OF APPEALS OF THE FIFTH CIRCUIT

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors, Appellants,

vs.

CITY OF AVON PARK, Debtor, Appellee

Motion of Appellants for Order Staying Mandate of the Circuit Court of Appeals

To the Honorable Judges of said Court:

Petitioners respectfully present this, their application for an Order staying the issuance of the mandate by the Circuit

Court of Appeals, Fifth Circuit, as provided by Section 350, Title 28, of the U. S. C. A., and in support thereof, show the following:

1. Appellants are now preparing and will file within a few days a petition with the Supreme Court of the United States praying for the issuance of a writ of certiorari to review the opinion and decision of this Court in the above entitled cause entered herein on the 31st day of January, 1940 and Appellants will forthwith instruct the Clerk to prepare the necessary record for submission to the Supreme Court of the United States with such petition.

Respectfully submitted, (Signed) Giles J. Patterson, Attorney for Appellants, American United Life Insurance Company and William E. Sweet.

[fol. 272] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 9294

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, et al., Creditors, Appellants,

versus

CITY OF AVON PARK, FLORIDA, Debtor, Appellee

On consideration of the application of the appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expira-

tion of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 15th day of February, 1940.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 273] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 267 to 272 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9294, wherein American United Mutual Life Insurance Company, et al., Creditors, are appellants, and City of Avon Park, Florida, Debtor, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 266 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 15th day of February, A. D. 1940.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 274] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 22, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 15 1940
CHARLES ELMORE CROPLEY
CLERK

No. 8[redacted]31

In the Supreme Court of the United States

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,
Petitioner,

vs.

CITY OF AVON PARK, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI, AND SUPPORTING BRIEF

GILES J. PATTERSON,
Counsel for Petitioner,
American United Mutual Life Insurance Company

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In the Supreme Court of the United States

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,
Petitioner,

vs.

CITY OF AVON PARK, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

TO: THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

May it please the Court, the Petitioner, American United Mutual Life Insurance Company, a corporation, respectfully shows this Court:

Statement of the Case

The above cause was filed in the District Court of the United States for the Southern District of Florida under

Section 83 of the National Bankruptcy Act as amended June 22, 1938 (11 U. S. C. A. 403). The petition of the City proposed a composition of its debts, and to the petition were attached the written consents of creditors of the City holding or owning bonds, (or judgments upon bonds), amounting to more than 66⅔ per cent of the total then outstanding. Among the creditors, were R. E. Crummer & Company, a Delaware corporation, and the Brown-Crummer Investment Company, a Kansas corporation.

R. E. Crummer & Company, a Delaware corporation, was organized in 1934 by the Brown-Crummer Investment Company, a Kansas corporation, exclusively for the purpose of representing clients of the latter company who had purchased bonds of Florida municipalities or political subdivisions that were in default in substantial amounts (R. 193); the officers and the control of the two corporations were substantially the same (R. 162, 178, 189, 192). Prior to July 17, 1937, these two corporations owned or represented a substantial portion of the bonds of the City of Avon Park which were then outstanding (R. 169). On that date R. E. Crummer & Company, the Delaware corporation, entered into a contract with the City of Avon Park, by which it was appointed Fiscal Agent of the City to effect a refunding of the City's debt by exchanging new refunding bonds for the City's outstanding bonds (R. 26). After the contract was executed, both of these corporations purchased other bonds and judgments against the City upon bonds, the bonds and judgments owned and purchased composing almost half of the claims held by creditors who consented to the petition. The Fiscal Agency contract required R. E. Crummer & Company, a Delaware corporation, to perform the following services: (R. 35)

> "Section 8. (A) That First Party shall defray all expenses incident to: (a) assembling the bonds herein proposed to be refunded; (b) printing the said Refunding Bonds; (c) the representation of Second Party in legal proceedings to validate said Refunding Bonds;

"(d) obtaining the approving opinion of nationally recognized bond counsel upon the procedure used for the issuance and validation of said Refunding Bonds, said counsel to be selected by First Party; (e) all other expenses in connection herewith which may be approved by First Party; (f) the cost of retaining special counsel to assist the City Attorney in determining the legal responsibility of the various properties which have at one time or another been within the supposed corporate area of Avon Park, Florida, for debt service taxed, said special counsel to be selected by First Party."

It appears from the record, that the proceedings in this case were initiated at the instance of the Fiscal Agent and were conducted by counsel employed by the Agent (R. 164). The Fiscal Agent was therefore a holder of a substantial portion of the outstanding bonds, and at the same time was in the position of acting as an agent of the City, managing, controlling and performing official functions of the City, which by law were committed to its officers.

The total of the City's debt as of July 1, 1937, (the date of proposed refunding) was $865,500.00 principal, and $358,251.76 interest (R. 208). The City proposed to issue new interest bearing refunding bonds in exchange for the entire amount of principal and accrued interest, less the amount by which the total accrued interest may be reduced by the sale to the City of accrued coupons from the bonds during the first six months at not exceeding 50% of par; the next six months at not exceeding 60% of par; the next six months at not exceeding 70% of par, and the next six months at not exceeding 75% of par. When the refunding bonds are issued they will not be worth more than 50% of their face value for at least six months thereafter, and the only way in which the City can pay the total of the debt represented by the refunding bonds, is through its probable ability to purchase a large portion of such refunding bonds at a discount from their face value (R. 177).

Under the plan, bondholders (other than the Refunding Agent) are required to pay to the Agent $20.00 per bond if they are willing to sell their accrued interest coupons and claims to the Refunding Agent at one-third of their value, and the City will in turn issue to the Agent refunding bonds for the par value of the claims thus purchased by it; or, holders may retain their coupons and interest claims and receive refunding bonds in lieu thereof, paying to the agent the sum of $40.00 per bond (R. 95-98).

Approximately one-half of the bonds from which consent has been obtained to the filing of the petition in this cause are owned or controlled by the Fiscal Agent (R. 104-106; 214-217). Unless these bonds are counted among those consenting, the City has not obtained the consent of more than two-thirds of its outstanding creditors as required by the statute. The agent will receive a profit from its arrangement with the City that will not inure to other holders. Hence, its consent to the filing of the petition is presumed to have been given by reason of that fact.

Application is hereby made to this Court for a Writ of Certiorari to review the decree of the Circuit Court of Appeals affirming the Interlocutory Decree of the District Court confirming the Plan of Composition on the following grounds:

I. The decision of the Circuit Court of Appeals, Fifth Circuit, rendered January 31, 1940, is contrary to the law of Florida, as laid down by the Supreme Court of Florida in its decision dated February 23, 1940, in the case of *Taylor v. Williams,* (not yet reported; a copy of the opinion therein is attached to this petition and marked Exhibit "A").

The Florida Supreme Court in that case held that a road district should be enjoined from issuing refunding

bonds under a contract with R. E. Crummer & Company, a Delaware corporation, because such contract attempted to appoint a foreign corporation, representing the holders of a substantial portion of the outstanding bonds of the City, as Fiscal Agent, to manage and control official functions involved in the issuance of refunding bonds.

R. E. Crummer & Company, a Delaware corporation, referred to in the *Taylor Case,* is the same corporation appointed Fiscal Agent of the City in the case at bar, and the services to be performed under the contracts in the two cases are identical (R. 35).

The decision in the Circuit Court of Appeals herein is in conflict with applicable Florida law in the following particulars:

(a) Sub-section (e), Section 403, 11 U. S. C. A., as a condition precedent to the confirmation of the plan, requires the Court to find that the Petitioner (the City) "is authorized by law to take all action necessary to be taken by it to carry out the plan." Under the law of Florida the issuance of the Refunding Bonds under the Plan of Composition here offered is illegal and can be enjoined by a taxpayer. The City in this case cannot legally "take all action necessary to carry out the plan" involved herein because it cannot deliver the refunding bonds, (the consideration for the composition), and under such circumstances the act requires the District Judge to dismiss the proceeding.

(b) The contract between the City and the foreign corporation Agent being illegal under the law of Florida, cannot furnish a legal predicate for a decree of a Federal court, confirming a Plan of Composition which is based upon an illegal contract, the contract being a part of the Plan (R. 23).

(c) The decision of the Circuit Court of Appeals is based solely on the authority of *Vallette v. City of Vero Beach,* 104 F. (2d) 59. That opinion held contrary to the law of Florida as announced by the Supreme Court of Florida in the *Taylor Case,* that there was no such conflict of interest as would prevent the foreign corporation from acting as Fiscal Agent under the contract, because it represented (or owned) a large part of bonds of the City. The law of Florida according to the Florida Court, does not contemplate or permit the appointment of a foreign corporation representing the holders of a substantial portion of the outstanding bonds as Fiscal Agent for a municipality, in managing or controlling official functions involved in the issuance of refunding bonds. After the decision of the Supreme Court of Florida, Petitioner applied to the Circuit Court of Appeals for a rehearing in this cause, and the petition was denied on the ground that it was not filed within the 21 days allowed by the rule of the Court, although the decision of the Florida Supreme Court was not rendered until after 21 days had expired.

II. The Circuit Court of Appeals has decided important questions of federal law which have not been, but should be settled by this court:

(a) By affirming the decree of this case on the authority of its previous decision in *Vallette v. City of Vero Beach,* supra, which has held that under sub-section 83 (b), being sub-section (b), paragraph 403, Title 11 U. S. C. A., the Plan of Composition in this case could, by contract between the City and one of the bondholders, impose the expense of refunding the City's debt upon other bondholders, thus relieving the City of all expense, at the expense of the holders other than the Agent.

(b) In like manner, it held that bonds of the City which were owned by the foreign corporation acting as Fiscal Agent of the City to effect a refunding of its in-

debtedness under a contract, could be counted in determining whether the City has secured the consent of the required two-thirds of its outstanding debts, although it appears that the Fiscal Agent will, through the decree of confirmation, profit by reason of its contract with the City at the expense of other bondholders, contrary to the fundamental requirement of bankruptcy law that all creditors shall receive equality of payment.

III. The decision of the Fifth Circuit Court of Appeals, by reason of its reliance upon its opinion in the earlier case of *Vallette v. City of Vero Beach*, supra, has decided a federal question in a way probably in conflict with the applicable decision of this Court, in *Case v. Los Angeles Lumber Company*, 84 L. Ed. 22, decided November 6, 1939, because in the *Vallette Case* the opinion of the Court indicated that its affirmance of the decree of the District Judge was predicated upon or was influenced by the fact that the "vast majority of the creditors of the City had consented" to the plan. This Court held in the cited case that such consent is not a test of whether the Plan is fair and equitable, and in this case nearly one-half of the bonds consenting were owned by the Fiscal Agent of the City.

WHEREFORE your Petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket "No. 9294, American United Mutual Life Insurance Company, et al., Creditors, Appellant, v. City of Avon Park, Debtor, Appellee", and that the said decree of the Circuit Court of Appeals may be reversed

by this Honorable Court, and that Petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY, a Corporation

By:_____

GILES J. PATTERSON,
Counsel for Petitioner.

EXHIBIT "A"

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1940

DODGE TAYLOR,
Appellant,

vs.

B. A. WILLIAMS, as Tax Collector of Lake County, Florida, and GEORGE J. DYKES, as Clerk of the Circuit Court of Lake County, Florida, and F. E. OWEN, Chairman, GEORGE L. SINGLETARY, H. K. STOKES, H. H. HETHCOX and MANUEL SLOAN, as and constituting the Board of County Commissioners of Lake County, Florida, and R. E. CRUMMER & COMPANY, a Delaware Corporation, doing business in the State of Florida,
Appellees.

LAKE COUNTY

Opinion filed February 23, 1940.

An Appeal from the Circuit Court for Lake County, J. C. B. Koonce, Judge. Thos. B. Adams, Duncan, Hamlin & Duncan, for Appellant; J. W. Hunter, Harry P. Johnson, Robert J. Pleus, D. C. Hull, Hull, Landis & Whitehair, for Appellees.

WHITFIELD, J.

A resident citizen owner of described land located within each of several overlapping special road and bridge districts in Lake County, Florida, filed a bill in equity seeking to enjoin the sale of the land for the taxes levied and assessed for the year 1938, and to enjoin future taxes

against his land located in each of such overlapping districts to pay bonds issued by the several special road and bridge districts, respectively, for road construction, it being alleged that the bonds were illegally issued and are void. Other relief is also sought. The defendants filed no pleading. The Court denied an injunction and dismissed the bill of complaint. Plaintiff appealed.

This suit is not to validate bonds under the statute, but it is brought by a taxpayer alleging illegality of the tax imposed for payment of bonds alleged to be illegal and void. Illegality in the contract for refunding bond fees is also alleged.

Questions 1 and 8 formulated by appellant in effect present contentions that the constitution impliedly forbids statutes creating or authorizing road and bridge districts to be established, with taxing authority to levy district taxes and to issue district bonds for the construction or maintenance of public roads in the districts respectively; and that

> "the County of Lake had no power or authority under any general law or under any special law to execute or promise to pay such bonds and that the supposed original bonds attempted to be issued for these special road and bridge districts are not the bonds of the districts severally; that as to said districts they are void and without force or effect. The consequence is that the supposed refunding bonds involved in this case are, if anything, *original* contracts and void because never approved by any freeholder election. As a result of the illegality of both the original supposed bonds and the so-called refunding bonds all debt service levies made in 1938 for these special road and bridge districts are severally void."

Prior to the 1930 amendment to section 6, Article IX, constitution, regulating the issue of county, district and municipal bonds, various road and bridge districts in Lake County, Florida, were created or authorized by statute with statutory authority to issue district bonds for public road construction purposes and to levy taxes in the districts, respectively, to pay the bonds. Some special statutes like several of those in this case authorized district bond issues without an approving vote of the electorate prior to 1930.

It appears that the bonds were refunded in proceedings pursuant to a contract dated August 6, 1935, and additions thereto, and pursuant to resolutions adopted by the Board of County Commissioners of Lake County, Florida, April 6, 1936, approving, adopting and confirming such contract; and that on August 7, 1939, another agreement was approved and resolutions adopted for another refunding of "all outstanding principal of the funded indebtedness of the county and all special road and bridge districts therein".

The constitution provides for school districts, sections 10 and 17, Article XII; and does not expressly or impliedly forbid the establishment of drainage, road and bridge or other districts, but "incorporated districts" are expressly referred to in Section 10, Article IX. Amended section 6, Article IX of the State constitution was adopted in 1930, after many districts had been established throughout the State by or under statutory authority and after authority to issue bonds and to tax for district bonds and other purposes had been conferred upon and exercised by or for the districts by duly authorized officers for proper district purposes, all being done to secure local improvements or facilities. The 1930 amendment to the constitution recognizes the existence of established districts in the State, and expressly regulates future issues of district bonds and refunding bonds. This organic amendment in effect ap-

proved the statutory policy of the legislature authorizing local districts with bond and taxing authority for duly authorized district purposes, the constitution not forbidding statutes establishing or authorizing the establishment of districts with authority to issue bonds and to levy taxes to pay the bonds issued for public road construction and other district purposes. The construction and maintenance of public roads is for statutory determination; and it may be made in whole or in part a State or county or district purpose.

Districts are established by or under organic or statutory authority, not for local governmental purposes as are counties and municipalities, but for the purpose of constructing or securing and maintaining public roads or other public improvements or facilities for local benefits to accrue therefrom to the inhabitants of each district and its citizens and taxpayers. See Jinkins v. Intzminger, 102 Fla. 167, 135 So. 785; Hopkins v. Special R. & B. Dist., 73 Fla. 247, 74 So. 310; Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449; Lee, Compt. v. A.C.L. Ry., filed January 2, 1940. The taxes are not required to be measured by actual or immediate special benefits to lands or to the inhabitants of a district. See St. Louis & S. W. Ry v. Nattin, 277 U.S. 157, 48 Sup. Ct. 438, 72 L. Ed. 830. The Tennessee and other authorities as to the power of the legislature to create or authorize taxing districts, cited by counsel for appellant, do not control under the interpretation of the Florida constitution.

The constitution does not require all taxes to be levied by a statute, but "in pursuance of law"; and when a board of county commissioners is by statute authorized to "cause to be assessed and collected" a district tax for authorized district purposes, the county commissioners may by resolution require the tax assessor of the county to assess, and the tax collector of the county to collect, the authorized

district tax for district purposes. The statutes here involved are not shown to be invalid or to be illegally applied in issuing bonds and levying taxes to pay the bonds.

Even if in some instance the amount of bonds authorized to be issued by county commissioners for district purposes is not specifically and expressly limited by statute, yet there may be implied limitations; and if appropriate and not excessive original bonds are issued and validated and sold and the proceeds used as provided by law for authorized district purposes, the abstract validity of the bonds, when not illegal or void for violation of organic law, may not, when validated and used as authorized, be challenged in the absence of fraud in which the bondholder participated. No clearly excessive issue of bonds of a particular district was duly shown. See principles announced in Getzen v. Sumter County, 89 Fla. 45, 103 So. 104; Paul Bros. v. Long Branch, etc., Bridge Distr., 83 Fla. 706, 92 So. 687.

Neither authorizing resolutions adopted, nor public road refunding bonds issued, by or for a district without the required approving vote of the electorate of the particular road and bridge district can legally contain directly, indirectly or otherwise, any pledge or agreement or undertaking that will add to the security that was pledged in the original bonds for the payment of the bonds. Such road and bridge district refunding bonds must merely extend the time of payment of original bonds, with a continuation of the pledged security, though at a lower rate of interest if acceptable in exchanging refunding bonds for the original bonds. No doubtful or ambiguous provisions should be in a refunding bond. The original obligations alone may be included and extended. Such additional pledge or agreement or undertaking if included in the resolutions for issuing the bonds or in the bonds, violates amended section 6, Article IX of the constitution unless the required approving vote of the electorate is had. Statutes cannot

authorize such added pledge, agreement or undertaking in issuing road and bridge district refunding bonds under amended section 6, Article IX, constitution, unless an approving vote of the electorate is obtained for such added authority or security.

When proceedings are brought in the Circuit Court under the statute to validate authorized county, district or municipal bonds, validation should be denied not only where illegality appears, but also where there are serious errors, defects or deficiencies in the proceedings taken for issuing the bonds or in the form or substance of the bonds. Courts should validate bonds only when their legality is established and their regularity in every important particular is also shown, so as to avoid as far as possible doubts as to the legality and regularity of the bonds as issued, and to inspire confidence in the bonds. But when such bonds have been validated, only questions of legality with reference to organic requirements or prohibitions or absence of statutory power are considered by the courts in the absence of fraud.

In this case the statute authorized road and bridge district bonds to be issued by the Board of County Commissioners of the county in which the districts are located. The bonds were issued by the County Commissioners pursuant to resolutions adopted by them, and the bonds under the resolutions were signed by the Chairman and Clerk of the Board. In form the bonds, as shown by one quoted in the record, were issued in the name of "The county of Lake in the State of Florida for and on behalf" of "Special Road and Bridge District", etc. The tax obligation of the district and "the full faith, credit and resources of the said 'Special Road and Bridge District' are pledged for the payment of the bonds." The validating decree adjudged the bonds to "be valid and legal obligations against the said special road and bridge district." When the statute,

the resolutions of the Board of County Commissioners for issuing the bonds, and the bonds as issued are considered together, it is clearly apparent that the Board of County Commissioners attempted to follow the meaning and purpose or intent of the statute in issuing the bonds. While a validation of the bonds as worded might well have been denied and the cause remanded for a more appropriate form to be used, yet as the original bonds were duly authorized, validated and sold, and the proceeds used for the authorized purpose, it is now too late to assert the bonds to be invalid in their entirety because of the form of the bonds, which form is not forbidden or fatally defective, but merely inaptly worded. The original bonds are not shown to be invalid under the controlling law when the original bonds were issued prior to the adoption of amended section 6, Article IX of the constitution in November, 1930.

The refunding bonds provided for by the resolutions of April 6, 1936, were issued by "The Board of County Commissioners of the County of Lake, in the State of Florida, and on behalf of" the particular district, which is a more appropriate form than that used in the original bonds. In each case the obligor was and is the district for which the bonds were issued as authorized by the statutes.

After the original bonds were issued the State supplemented the district contract tax obligation by allocations of funds from the "second gas tax" levied by Chapter 15659, Acts of 1931; but such allocations are as to the bondholders a mere gratuity which may be terminated at any time. The district authorities have no authority to pledge such allocated funds, and any such provisions contained in a refunding bond are illegal and of no effect. See State v. County of Citrus, 116 Fla. 676, 157 So. 4, 97 A.L.R. 431. If severable, such illegal provisions may be regarded in law as eliminated from the face of the bonds,

the remainder of the bonds standing, unless the record of the issuing and validating proceedings show an intent to violate the organic provisions, which might invalidate the entire bond notwithstanding the validating decree. In this case the illegal provisions are severable and the record of issue or validation shows no positive intent to violate the mandatory provisions of amended section 6, Article IX or other provision of the constitution. The provision for "deferred interest" coupons is not authorized by law and should be eliminated. Outman v. Cone, filed December 23, 1939.

Referring to the form of road and bridge district refunding bond copied from the transcript of the record, the following is regarded as eliminated from the bonds:

"if this bond shall not have been called and retired as hereinafter provided, on or before six months prior to maturity, the full interest at the rate of six per cent. per annum, less the amount theretofore paid from the date hereof to such call date or such maturity date, shall also at that time be enforceable, collectible, and paid upon presentation and surrender of the special deferred interest coupon hereto attached. The right is hereby reserved to call and redeem all or any part of the issue of bonds of which this bond is one on any interest payment date, six months, or more, prior to maturity, according to the following terms and conditions: At Par, plus accrued interest at the rate then prevailing, from date hereof to July 1, 1945; at par plus accrued interest at the rate then prevailing and plus one-half of the deferred interest, from and after January 1, 1946, to and including July 1, 1955; at par, plus accrued interest at the rate then prevailing and plus three fourths of the deferred interest, from and after January 1, 1956, to and including July 1, 1960; and at par, plus accrued interest at the rate then prevailing and plus the full amount of the deferred interest, from and after

January 1, 1961, to and including January 1, 1963; and at maturity this bond shall be payable at par, plus accrued interest at the rate then prevailing and plus the full amount of the deferred interest. x x x x x "x x and the interest otherwise payable at maturity to make up the total of six per cent. (except as all or part of same is to be paid in certain cases in the event of said call for redemption) shall be deemed to be waived by the surrender of this bond. "x x x All rights and remedies which were available for the support and enforcement of the bond refunded by this bond shall be available for the support and enforcement of this bond."

The last quotation may include gas tax funds or other added security, and, being ambiguous, should be eliminated. With the above quoted provisions eliminated, the refunding bonds are not clearly shown to be illegal or void. The refunding bonds will then extend the original bond contract obligations.

Resolutions 10 and 11 contained in the contracts and resolutions for refunding the bonds are regarded as violative of section 6, Article IX, constitution, as amended, and are eliminated wherever they or either of them appears in the refunding bond contracts or resolutions. Such provisions being organically illegal, are not made valid by validating proceedings, and a tax payer may challenge such organic invalidity.

Section 5, Article VIII, Florida constitution as amended in 1900, provides for the division of each county into districts and for the election of one county commissioner from each of such districts, whose powers, duties and compensation shall be prescribed by law. Statutes authorizing the county commissioners to issue bonds and refunding bonds for the county and the road and bridge districts

therein, require official action in the issue of bonds and in all matters pertaining thereto which are functions or duties involving discretion and fiduciary attention to conserve the best interests of the county, the road and bridge districts therein, and the citizens, residents and taxpayers thereof.

Appellant's Question No. XI:

"Is the new 2 per cent refunding agreement dated August 7, 1939, complained of in the Taylor bill (Taylor Record, page 43), void, and should its performance have been enjoined?"

In the issuing of bonds to be paid by taxation, the official duties of the county commissioners include the administrative function of providing directly for the printing, approval and other legal or fiscal matters, not including mere technical or ministerial services which may be performed by employees. As shown by the resolutions adopted August 7, 1939, by the county commissioners; the contract of August 7, 1939, states that R. E. Crummer & Company, "first party," is "a Delaware Corporation," and the county commissioners, "second party". As stated in the agreement of August 6, 1935, R. E. Crummer & Company "represents the holders of a substantial portion of the outstanding bonds of Lake County." The law does not contemplate or permit the appointment of a foreign corporation representing "the holders of a substantial portion of the outstanding bonds" as fiscal agent for the county or districts in managing or controlling any of the official functions involved in the issuing of refunding bonds. The contract of August 7, 1939 provides:

"That first party (R. E. Crummer & Company) shall defray all expenses incident to: (a) assembling and exchanging the bonds herein proposed to be refunded; (b) printing the said refunding bonds; (c) the representation of Second party (the county commissioners) in legal proceedings to validate said refunding bonds; (d) obtaining the approving opinion of nationally recognized bond counsel upon the procedure used for the issuance and validation of said Refunding Bonds, said counsel to be selected by First party; (e) all other expenses in connection herewith which may be approved by First Party."

Nor does the law permit the payment of money from the sinking funds of the county or districts as fees for a refunding agent. Pierce v. Isaac, 135 Fla. 101, 184 So. 669. When such an agent may legally be employed for services in no wise official in their nature, proper compensation for such service may be provided for as the law authorizes.

The refunding resolutions and contracts are not in accord with law and the bill of complaint should not have been dismissed. This is a taxpayer's suit and not a bond validating proceeding.

DECREE REVERSED FOR PROPER PROCEEDINGS AND DECREE.

TERRELL, C. J. WHITFIELD, BROWN, BUFORD, CHAPMAN AND THOMAS, J. J. concur.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Reference to Opinion of Court Below

The opinion of the Circuit Court of Appeals, rendered on January 31, 1940, has not yet been reported. The entire opinion reads as follows:

"PER CURIAM:

> There being no substantial distinction between this case and that presented in Vallette vs. City of Vero Beach, 104 Fed. (2d) 59, the order appealed from is affirmed, upon the authority of that case."

II.

Statement of Grounds of Jurisdiction

The City of Avon Park seeks a composition of debts under the provisions of Sections 81, 82, 83 and 84 of Chapter IX, of the Bankruptcy Act, as amended June 22, 1938 (11 U.S.C.A. 403). From a decree of confirmation of the Plan of Composition and adverse to certain dissenting creditors, Petitioner, (as one of such dissenting creditors), has filed his Petition for Writ of Certiorari, as provided by Section 240 of the Judicial Code as amended (28 U.S.C.A. 347).

III.

Statement of the Case

Inasmuch as a full statement of the case, in so far as the facts are material to a consideration of this petition, has been given in the Petition for Certiorari under the heading "Statement of the Case", in the interest of brevity that statement is not repeated at this point.

IV.

Specification of Errors Intended to be Urged

The errors committed by the Circuit Court of Appeals in its decision, which we urge as a basis for consideration of this petition, are:

1. That the decision of the Fifth Circuit Court of Appeals is contrary to the law of Florida as announced by the Supreme Court of Florida, in the case of *Taylor v. Williams,* decided February 23, 1940, subsequent to the rendition of the decision in this case.

2. The Court erred in affirming the Interlocutory Decree of the District Court because it appears in the record that nearly one-half of the bonds that consented to the filing of this proceeding were owned by the Fiscal Agent of the City, which would receive a benefit or profit from the decree of confirmation at the expense of other bondholders, contrary to the fundamental principles of bankruptcy that all creditors of the same class shall receive equal treatment.

3. The Court erred in affirming this case upon the authority of *Vallette v. Vero Beach,* supra, because the Fifth Circuit Court of Appeals in its opinion in the *Vallette Case* indicated that its decision was influenced by the fact that a "vast majority of the creditors of the municipality" had consented.

ARGUMENT

Point I.

The decision of the Circuit Court of Appeals is contrary to the law of Florida, as announced by the Supreme Court of that state in Taylor v. Williams, supra.

The provisions of the contract between R. E. Crummer & Company, a Delaware corporation, and the City of Avon Park, (Section 8a) and those of the contract between the same foreign corporation and the Road and Bridge District involved in the *Taylor Case* are in substance identical. The Florida Court held that the duties to be performed by the corporation Agent under the contract in the *Taylor Case*, were duties which the law of Florida required to be performed by officials of the District. The exact language of the decision of the Florida Court is as follows:

> "The law does not contemplate or permit the appointment of a foreign corporation representing 'the holders of a substantial portion of the outstanding bonds' as Fiscal Agent for the county or district in managing or controlling any of the official functions involved in the issuing of refunding bonds."

(a) Sub-section (a) of Section 403, 11 U.S.C.A., provides that before affirming a Plan of Composition, the District Judge shall find that Petitioner is authorized by the law of the State of Florida to take all action necessary to carry out the Plan of Composition submitted in its Petition. As this condition is predicated upon the existence of lawful authority under the laws of the state, the decision of the Florida Supreme Court in the case of *Taylor v. Williams, supra*, that the City was not permitted to enter into a contract of Fiscal Agency with a foreign corporation that represented a large portion of its bonds (as is the case here) and that the issue of refunding bonds under such a contract should be enjoined in an action brought by a taxpayer, the City cannot legally issue the refunding bonds which are made the consideration for the proposed composition. Because of the invalidity of the refunding contract, the City cannot legally take the action necessary to carry out this plan, and the absence of this jurisdictional pre-requisite to a decree of confirmation is fatal to the proceedings because the federal statute under which the

proceedings were filed requires that under such circumstances the proceeding should be dismissed.

(b) The contract between the city and the Fiscal Agent being illegal under the law of Florida, as construed by the Supreme Court of that State, a federal court should not give legal effect to that contract in this proceeding against dissenting bondholders by affirming the plan of composition and enjoining rights of creditors upon their bonds and judgments, and compelling them to pay the agent fees provided for in its contract with the City where the illegal contract is an integral part of the Plan of Composition.

(c) The decision of the Fifth Circuit Court of Appeals in this case is predicated solely upon its opinion and decision in *Vallette v. City of Vero Beach,* supra. At the time the opinion in that case was rendered by the Circuit Court of Appeals the Florida Court had not passed on the validity of the provision of a refunding contract such as that here involved, and the Circuit Court of Appeals held that the fact that the foreign corporation was the owner or representative of creditors when it accepted employment as Fiscal Agent, did not create such a conflict of interest as to render the contract illegal. The opinion in this case necessarily reaffirmed that decision. The Florida Supreme Court, since the decision in *Vallette v. City of Vero Beach,* supra, and the decision in this case has held that under the law of Florida a municipal corporation is not permitted to appoint a foreign corporation representing the holders of a substantial portion of the outstanding bonds of the Petitioner, as Fiscal Agent, by a contract that requires the Agent to manage or control the official functions involved in the issuing of refunding bonds. The particular duties required of the Agent in the Florida case are identical with those required by the contract involved in the present case. Since the Florida

Court has held such a contract contrary to the public policy of the state, the federal court should likewise hold such contract illegal.

Whether invalidity of the contract involved in the case of *Taylor v. Williams,* supra, be considered as being due to the fact (a) that the Agent is a foreign corporation, or (b) that the Agent represents (or owns) a substantial portion of the bonds of the city, or (c) that the Agent is required to perform official functions which should under the law of Florida be performed by the public officials of the city, or whether it is due to the existence of two or all three of these facts, it is nevertheless true that in this case all three of such facts existed. The Agent is the same foreign corporation which was involved in the *Taylor Case.* The record shows that it was organized for the purpose of, and did represent bondholders to whom it, or its affiliate corporation, had sold Florida bonds, and that both corporations at the time of the contract owned bonds of the City, and after entering into its contract with the City, acquired more. The services to be performed by the Agent under both contracts are identical.

The refusal of the Circuit Court of Appeals to reconsider its decision after the decision of the Florida Court in *Taylor v. Williams,* supra, because of the fact that the time for filing a petition for rehearing had expired, renders it even more necessary that this Court take jurisdiction of this case; otherwise, the District Court would proceed to final decree on the assumption that its decree of confirmation was correctly made, although such decree is contrary to the law of Florida.

Point II.

The Decision of the Circuit Court of Appeals is Contrary to Applicable Decisions of this Court.

The primary requisite in all compositions in bank-

ruptcy proceedings has been equal treatment of all creditors of the same class. The decision of the Fifth Circuit Court of Appeals violates this principle in that:

(a) It sustains the power of the District Court to give effect to the provisions of a contract between the City and one of its creditors, to assess the expense of the refunding, including the cost of the bankruptcy proceeding, against other creditors, so long as the proposal to do so is included within the Plan of Composition.

(b) It reaffirms that right in the present case although in order to comply with the provisions of subsection (d), paragraph 403, 11 U. S. C. A., the Plan must have been accepted in writing by at least two-thirds of the aggregate amount of claims, and it also affirmatively appears that in order to hold that the consent of 66⅔% has been given, it is necessary to count the bonds owned by the Fiscal Agent of the City, which would receive a substantial benefit from the confirmation of the Plan.

Both of these holdings are contrary to the principles of bankruptcy as applied to composition, because they result in a discrimination in favor of the Agent and against other bondholders. The Court must necessarily presume that the consent of the Agent on behalf of the bonds it represents or owns, to the filing of the petition, was given in order to enable it to enforce provisions of its contract with the City and collect its fees for the refunding from other holders, as well as to benefit by its speculation in coupons. This Court should also consider the fact that the City, by its contract with one of its holders, imposed all of the expense of a proceeding brought for its benefit upon bondholders.

In its opinion in the *Vallette Case*, the Circuit Court of Appeals admitted that it was troubled by the element

of speculation on the Agent's part in the old coupons which might lead "to discontents, or even scandals." Although it expressly said it did not approve the plan *in principle*, it affirmed the decree of the District Judge. Any contract arrangement that might have such a result is contrary to public policy and should not be presumed to be a compliance with the provision of an act of Congress.

III.

The Circuit Court of Appeals has Decided a Federal Question in a Way Probably in Conflict with the Decision of this Court in Case v. Los Angeles Lumber Company.

By affirming the decision of the District Court in this case upon the authority of its own opinion in the case of *Vallette v. Vero Beach*, 104 F. (2d) 59, the Circuit Court of Appeals thereby impliedly reaffirmed its holding in the latter case, that the consent of the vast majority of creditors to the composition strongly supported the action of the District Judge. This Court in *Case v. Los Angeles Lumber Company*, decided November 6, 1939, held that the consent of a vast majority of creditors furnished no proof that the plan was fair and equitable. In this case where it affirmatively appears that nearly one-half of the bonds consenting to the plan are owned by the Fiscal Agent, the lower court should have held that this fact at least created a presumption of unfairness that should have been overcome by affirmative evidence to the contrary.

The procedure for composition under Paragraph 403, Title 11, U. S. C. A., necessarily requires an agreement between the holders of a majority of the bonds of the

taxing district and the district itself. It could never have been intended to authorize the taxing district and one group of bondholders to use that agreement in a manner and for the purposes shown in this case.

Respectfully submitted,

GILES J. PATTERSON,
Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM 1940

No. 31

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,
Petitioner,

vs.

CITY OF AVON PARK, FLORIDA,
Respondent.

BRIEF OF PETITIONER

GILES J. PATTERSON,
Attorney For Petitioner.

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POINT I

The decision of the Circuit Court of Appeals of the Fifth Circuit rendered January 31, 1940, is contrary to the law of Florida as announced by the Supreme Court of Florida in its decision dated February 23, 1940, in the case of *Taylor v. Williams*, 195 So. 175 11

POINT II

By affirming the decree of the District Judge, the Circuit Court of Appeals of the Fifth Circuit held contrary to law that the bonds and coupons of the City which were owned by the Fiscal Agent, a foreign corporation, could be counted in determining whether the City had secured the consent of the required two-thirds of its outstanding debts, when it appeared without contradiction that the Fiscal Agent would profit by reason of its speculation under the terms of its contract with the City in the securities of its principal, the City of Avon Park, at the expense of other bondholders, and in a manner which inhibited the District Judge from determining that the compensation which the Agent would receive for its services was reasonable 19

POINT III

The decision of the Circuit Court of Appeals of the Fifth Circuit affirming the decree of the District Judge is in conflict with the decision of this Court in the *Los Angeles Lumber* case, 84 L. ed. 22, because affirmance was predicated solely upon its previous opinion in *Vallette v. City of*

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Vero Beach, 104 F. (2d) 59, and its opinion in that case appears to have been influenced by the fact that "the vast majority of the creditors of the City had consented", although the court in its opinion admitted that the speculation by the Agent in the obligations of its principal (the City) "might lead to discontents or even scandals", a contingency not contemplated or permitted by the Act of Congress authorizing this procedure 27

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BRIEF OF PETITIONER

I.

Opinions Below

The opinion of the Fifth Circuit Court of Appeals is reported in 108 F. (2d) 1010.

II.

Jurisdiction of This Court

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, 28 U.S.C.A., Section 347(a) as amended by the Act of Congress of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938.

The petition for certiorari was filed March 15, 1940, and the writ was granted on April 22, 1940.

The decision to be reviewed is that of the Fifth Circuit Court of Appeals rendered January 31, 1940, affirming *per curiam* on the authority of *Vallette v. City of Vero Beach*, 104 F. (2d) 59, a decree of the District Court in and for the Southern District of Florida, dated the 19th day of June, 1939.

III.

Statement of the Case

This proceeding is initiated under Sections 81, 82, 83 and 84 of Chapter IX of the Acts of Congress relating to bankruptcy. Petition was filed August 15, 1938, by the City of Avon Park, a municipal corporation, organized under the laws of Florida. The petition alleges that the City is in default in the payment of principal and interest of its outstanding bonds; that it has been unable to pay the same as they came due, and that it is impossible to collect sufficient taxes to meet its delinquent obligations. It, therefore, proposes to make a Composition with its creditors according to a Plan which is attached to the petition and marked Exhibit A (p. 16 et seq.). Paragraph 6 of the petition, (p. 8) alleges that the Plan of Composition "is embodied in that certain agreement made and executed July 17, 1937" between the City and R. E. Crummer & Company, a Delaware corporation; that "said agreement constitutes all of the understandings, agreements and plan of settlement of the bonded debt", and that "said agreement constitutes the sole and exclusive plan of settlement" of the City's indebtedness. The contract between the City and R. E. Crummer & Company is attached to the petition and marked Exhibit B (p. 27 et. seq.).

The Plan of Composition has been submitted to the creditors of the City (Sec. 8 p. 9), and creditors holding securities to the amount of $546,500. principal and $176,986.66 interest, which is more than 51% of the aggregate debt, it is alleged have executed written acceptances of the Plan. The petition also alleges (par. 12) that the Plan is fair and equitable, and for the best interests of the creditors.

The Composition offered involves the issuance by the City of refunding bonds in an aggregate principal amount equal to the principal of the bonds outstanding as of July 1, 1937, plus the interest which had accrued and was unpaid as of that date, in exchange for outstanding bonds and interest (Sec. 5, p. 8). The refunding bonds are to be dated July 1, 1937, to mature July 1, 1967, and to bear interest at the rate of 2% per year for 2 years from date, 3% per year for the next 6 years, 4% per year for the next 7 years, and 5% thereafter.

The contract of the City with R. E. Crummer & Company provides (Exhibit B, p. 28) that the latter shall "endeavor to accomplish a refunding, by a par for par exchange" of the new bonds for the old bonds and interest. By Section 8 (p. 35) the Fiscal Agent, as the corporation is designated in the contract, agrees to "defray all expenses incident to" (a) assembling the bonds to be refunded; (b) printing the refunding bonds; (c) representation of the City in legal proceedings to validate the refunding bonds; (d) obtaining the approving opinion of nationally recognized bond counsel upon the validity of the refunding bonds; (e) all other expenses in connection therewith which may be approved by first party; and (f) cost of retaining special counsel to assist the City Attorney in determining the responsibility of the various properties for debt service taxes, and by Section 9 (p. 36) the City agrees that the Fiscal Agent shall be reimbursed and compensated for

expenses and services by assessing charges against "security-holders *who accept refunding bonds under the terms hereof.*" The amount of the assessment is to be "a matter wholly between First Party (Crummer) and security-holders *who accept said refunding bonds.*" Exhibit A fixed the charge to be made against the participating bondholders at $20. per bond, but, according to the testimony of the Vice President of the Fiscal Agent (p. 172), participating bondholders were compelled to sell their interest accruals (coupons and accrued interest) to the Fiscal Agent at the exchange, at the rate of 2% per annum. The Fiscal Agent, in turn, agreed that it would hold interest adjustment bonds received by it in exchange for the coupons so purchased by it, subject to the order of the City for use in paying delinquent taxes; "Said bonds to be delivered by R. E. Crummer & Company upon the order of the City" at not exceeding 50% of their face value for the first 6 months, 60% for the next 6 months, 70% for the next 6 months and 75% for the next 6 months.

The American United Life Insurance Company is a creditor of the City and holds a judgment against the City, dated October 1, 1936, in the sum of $13,942.50, and 35 bonds of the par value of $35,000. upon which interest amounting to $4,550. had accrued and was unpaid on July 1, 1937. Its Answer (p. 63) opposed granting of the petition of the City on the ground that the Plan was not fair and equitable by reason of the terms of the contract with the Fiscal Agent, and was a discrimination by the City in favor of the claims of the Fiscal Agent.

The Fiscal Agent, R. E. Crummer & Company, is a Delaware corporation, organized in 1934 (p. 62) "almost exclusively for the purpose of representing clients of the Brown-Crummer Investment Company, a Kansas corporation, who had purchased bonds in Florida that were then in default in substantial amounts". The two companies

are owned and controlled by the same persons, and the same individual is president of both corporations (pp. 162, 178, 189 and 192). The two companies own the following claims against the City: (See Master's Report, p. 214 et seq.).

Claim No.	Aggregate Prin. Amt.	Interest Accrued to 7-1-37
10	$3,000.00	$ 1,305.00
15		25,243.33
45	10,000.00	450.00
46	24,000.00	58,535.00
47		3,460.00
52	95,000.00	14,168.33
53	1,000.00	1,540.00
54	146,000.00	35,774.17
	$279,000.00	$140,475.83

Just when these claims were purchased by these corporations, is not clear, but the testimony of the Vice President of the Fiscal Agent (pp. 169, 170, 177, 203 and 204) establishes beyond doubt that one or both of the corporations owned a substantial portion of these claims at the time the Fiscal Agency contract was entered into with the City. Some of the bonds, coupons and judgments owned by the two corporations were purchased after the contract was made (p. 170). The price which the Fiscal Agent and its affiliated corporation paid for the bonds, coupons and judgments owned by them was approximately 50% of their face value (p. 170). They were bought flat,—that is, the purchase price made no specific allowance for accrued interest.

When representatives of R. E. Crummer & Company opened negotiations with the City, they went there "as a representative of bondholders" (p. 199), but afterward the corporation entered into the contract (Exhibit B. p. 26) to

act as Fiscal Agent for the City to carry out a plan of refunding (p. 27, first par., and p. 28, Sec. 1). The Vice President of R. E. Crummer & Company testified (p. 163) that it was the duty of the company under the contract "to attempt to complete a refunding of the indebtedness" of the City, and to perform "all technical services that had to be performed, in order to accomplish those results, and presenting the plan to bondholders and making exchanges". After the contract was executed, the Fiscal Agent immediately began to assemble information (pp. 164-165) necessary to enable it to present a Plan. It made a survey of the outstanding debt, and prepared a set of resolutions and papers to authorize the issuance of refunding bonds. These were submitted to the City Council for approval. Proceedings to validate the bonds were prepared and filed by Mr. Jollay, who had represented the Fiscal Agent in other matters. Representatives of the Fiscal Agent personally interviewed creditors to secure their consent to the plan (p. 171). Its representatives discussed the matter 15 or 20 times with the representatives of the American United Life Insurance Company (p. 206).

Meantime, a Plan of Composition, embodying the provisions of Section 10 of the Contract (Section 9 of the original Plan, pp. 24 and 25) had been presented by the City of Vero Beach to Judge Holland of the District Court, who refused to approve it because it would coerce bondholders into selling their interest claims to the Fiscal Agent at a discount. The Vero Beach Plan was amended, and the amendment was "transferred to the Avon Park Plan practically verbatim" (p. 197). Avon Park then amended its Plan (Exhibit A, p. 86 et seq.). The only changes made from the original Plan were in the provisions relating to compensation of the Agent and disposition of the past due interest claims. Under the amended Plan, compensation of the Fiscal Agent for its services and reimbursement for its costs are still to be assessed

only *"against the participating bondholders,* the amount of such charges to be a matter between the Fiscal Agent and the bondholders participating in the Plan", but the charge is set at $40. per bond instead of $20. as originally provided. Amended Section 9 provides that the participating bondholders are required to deposit "evidences of all interest accrued to July 1, 1937 with an escrow agent which would issue to the depositors certificates" showing the amount deposited, and the escrow agent would then reduce the amount of such claims upon the receipt of the proceeds of tax collections from delinquent taxes during a period of 2 years at the same rates of discount fixed in the original Plan. After 2 years, the escrow will be closed, and refunding bonds equal to the unpaid balance will be delivered to the escrow agent for distribution to the holders of the certificates of deposit. By a proviso, (p. 99) depositors may, if they so elect within 10 days after the issuance of certificates to them, "receive from the Fiscal Agent, R. E. Crummer & Company, in lieu of said certificates, an amount of money equal to the sum which would be payable if the interest accruals to July 1, 1937 had evidenced at the rate of 2% per annum" in exchange for the assignment of their certificates and the payment of $20. per bond instead of the $40. otherwise required.

The Master's Report shows that holders of more than the 66⅔% of the outstanding bonds executed written acceptances of the Plan (p. 224). But it also shows that of the 66⅔% of claims who accepted, $419,475.83, or 34.2%, were owned by R. E. Crummer & Company or Brown-Crummer Investment Company. If only the claims owned by R. E. Crummer & Company are deducted from the total listed as having accepted, the Plan will not have been accepted by the percentage required by statute.

City officials, including two Clerks, a City Auditor, and a member of the City Council, all testified that they took

no active part in preparing the Plan or in soliciting acceptances of it, or in preparing legal proceedings. Mr. Jollay acted as attorney for the City in the validation proceedings, and originally in the present proceedings (pp. 15, 45, 102 and 150). In the Circuit Court of Appeals, the City was represented by Mr. Pleus, who is representing it in this Court. At the first hearing before the Master (p. 195) he appeared as counsel for the Fiscal Agent. It is admitted (p. 177) that the refunding bonds when issued will not be worth their face value. The Fiscal Agent says (p. 177) that they will not be worth more than 50% for 6 months after they shall have been issued; that the City will not have to pay the bonds at par; that it probably will not be able to pay them at par (p. 177) because success of the plan is "dependent upon the ability (of the City) to buy in these bonds at reduced values through a period of years, both through the escrow fund and other sources". (p. 190). In other words, the principal of the new debt is an artificial structure, and successful liquidation of it will depend upon market manipulation by the City. The City does not intend to pay the principal and interest in the amounts which the bonds specifically promise to pay, and the amount which the various bondholders will receive for their bonds is purely speculative. This conclusion is fortified by the fact that the principal debt of the City will be increased by $358,251.76 (the interest which had accrued as of July 1, 1937), less such portion thereof as may be liquidated during the first 2 years through the operation of the escrow arrangement. The increased principal will be placed upon an interest bearing basis. Since the City was not able to pay principal and interest accruing on its original indebtedness of $895,000.00, it is improbable that it will be able to pay principal and interest on an indebtedness aggregating over one million dollars. The artificial structure of the debt also presents an opportunity for the Fiscal Agent to profit through speculation in the claims it now owns, and in those which it may hereafter

urchase, because sub-section (A) of Section 10 (Exhibit
3. p. 36) gives the Fiscal Agent "exclusive authority to
ct for and on behalf of Second Party (the City) in all
natters connected with, or relating to, the exchange of the
resently outstanding securities for refunding bonds," and
ub-section (F) of the same section (p. 38) prohibits the
ity from making settlements with any other creditor until
fter it has given notice to the Fiscal Agent of its intention
o to do.

The record sustains the allegations in the Answer of
he insurance company (p. 67) of discrimination by the
ity in favor of the Fiscal Agent. Prior to, or about the
ime, the Fiscal Agent entered into a contract with the
ity (p. 175) it instituted a mandamus proceeding against
he City in the name of Meredith, Rogers and Martin, who
ere "officers or parties connected with the Fiscal Agent
r Brown-Crummer Investment Company" (p. 178). At
irst, the City contested the case, but after entering into
he contract with the Agent, it withdrew its opposition
p. 175) and levied a tax for the payment of the claim. At
he same time, it deliberately ignored the command of
ther writs issued by Federal and State courts on behalf of
etitioner and other creditors, ordering the City to levy
axes for the payment of their claims. The City has
ollected a sum of money from the levy which it made for
ne writ of the Fiscal Agent. This fact was not disclosed,
ither in the Plan or in the petition. On page 200, the
ice President of the Fiscal Agent says that the money
as to be used to meet the first year's appropriation for a
inking fund under the refunding plan, and orally waived
ne rights of the relators (and of the Fiscal Agent) in
avor of "creditors as a whole," but this waiver was not
ade until after the bankruptcy petition had been filed
nd until after existence of the fund had been disclosed.
he decree (p. 248) recites that owners of the writ have
aived their rights and have directed that the money col-

lected be used "under the refunding plan". If the Plan had not been confirmed, the proceeds of the levy would have been paid to the Agent.

IV.

Errors Assigned

The errors assigned are:

1. That the decision of the Circuit Court of Appeals of the Fifth Circuit rendered January 31, 1940, is contrary to the law of Florida, as announced by the Supreme Court of Florida in its decision dated February 23, 1940, in the case of *Taylor v. Williams*, 195, So. 175. The opinion in that case was reaffirmed on rehearing in 195 So. 181, and again in 196 So. 214, Advance Sheets.

2. That by affirming the decree of the District Judge, the Circuit Court of Appeals of the Fifth Circuit held contrary to law that the bonds and coupons of the City which were owned by the Fiscal Agent, a foreign corporation, could be counted in determining whether the City had secured the consent of the required two-thirds of its outstanding debts, when it appeared without contradiction that the Fiscal Agent would profit by reason of its speculation under the terms of its contract with the City in the securities of its principal, the City of Avon Park, at the expense of other bondholders, and in a manner which inhibited the District Judge from determining that the compensation which the Agent would receive for its services was reasonable.

3. The decision of the Circuit Court of Appeals of the Fifth Circuit affirming the decree of the District Judge is in conflict with the decision of this Court in the *Los Angeles Lumber case*, 84 L. ed. 22, because affirm-

ance was predicated solely upon its previous opinion in *Vallette v. City of Vero Beach,* 104 F. (2d) 59, and its opinion in this case appears to have been influenced by the fact that "the vast majority of the Creditors of the City had consented," although the court in its opinion admitted that the speculation by the Agent in the obligations of its principal (the City) "might lead to discontents or even scandals," a contingency not contemplated or permitted by the Act of Congress authorizing this procedure.

POINT I.

The decision of the Circuit Court of Appeals of the Fifth Circuit rendered January 31, 1940, is contrary to the law of Florida as announced by the Supreme Court of Florida in its decision dated February 23, 1940, in the case of Taylor v. Williams, 195 So. 175.

This point was the first ground of the petition to this Court for writ of certiorari.

Prior to the decision by the Fifth Circuit Court of Appeals in this case, the Supreme Court of Florida had not passed upon the validity of a contract similar to that embodied in Exhibit B (p. 26). But on February 23, 1940, 23 days after the decision of the Circuit Court of Appeals, it rendered an opinion in the case of *Taylor v. Williams,* in which was involved the validity of a contract between R. E. Crummer & Company and Lake County, Florida, that was substantially the same in its terms as the contract of that company with the City of Avon Park. The similarity of the provisions of the two contracts is shown herewith in parallel columns:

Taylor v. Williams	*Avon Park*
"That first party (R. E. Crummer & Company) shall defray all expenses incident to:	"Section 8. (A) That First party shall defray all expenses incident to:

(a) assembling and exchanging the bonds herein proposed to be refunded:

(b) printing the said refunding bonds;

(c) the representation of Second party (the county commissioner) in legal proceedings to validate said refunding bonds;

(d) obtaining the approving opinion of nationally recognized bond counsel upon the procedure used for the issuance and validation of said Refunding Bonds, said counsel to be selected by First party;

(e) all other expenses in connection herewith which may be approved by First Party."

(a) assembling the bonds herein proposed to be refunded;

(b) printing the said Refunding Bonds;

(c) the representation of Second Party in legal proceedings to validate said Refunding Bonds;

(d) obtaining the approving opinion of nationally recognized bond counsel upon the procedure used for the issuance and validation of said Refunding Bonds, said counsel to be selected by First Party;

(e) all other expenses in connection herewith which may be approved by First Party;

(f) the cost of retaining special counsel to assist the City Attorney in determining the legal responsibility of the various properties which have at one time or another been within the supposed corporate area of Avon Park, Florida, for debt service taxes, said special counsel to be selected by First Party."

The first opinion by the Supreme Court of Florida in the *Taylor* case is reported in 195 So. 175, where, referring to the contract, the court said:

> "Section 5, Article VIII, Florida constitution as amended in 1900, provides for the division of each county into districts and for the election of one county commissioner from each of such districts, whose powers, duties and compensation shall be prescribed by law. Statutes authorizing the county commissioners to issue bonds and refunding bonds for the county and the road and bridge districts therein, require official action in the issue of bonds and in all matters pertaining thereto which are functions or duties involving discretion and fiduciary attention to conserve the best interests of the county, the road and bridge districts therein, and the citizens, residents and taxpayers thereof.
>
> Appellant's question No. XI:
>
> 'Is the new 2 percent refunding agreement dated August 7, 1939, complained of in the Taylor bill (Taylor Record, page 43) void, and should its performance have been enjoined?'
>
> In the issuing of bonds to be paid by taxation, the official duties of the county commissioners include the administrative function of providing directly for the printing, approval and other legal or fiscal matters, not including mere technical or ministerial services which may be performed by employees. As shown by the resolutions adopted August 7, 1939 by the county commissioners, the contract of August 7, 1939, states that R. E. Crummer & Company, 'first party' is 'a Delaware Corporation', and the county commissioners 'second party'. As stated in the agreement of August 6, 1935, R. E. Crummer & Company 'represents the holders of a substantial portion of the outstanding bonds of Lake county'. The law does not contemplate or permit the appointment of a foreign corporation representing 'the holders of a substantial portion of the outstanding bonds' as fiscal agent for the county or districts in managing or controlling any of

the official functions involved in the issuing of refunding bonds. The contract of August 7, 1939 provides:

'That first party (R. E. Crummer & Company), shall defray all expenses incident to: (a) assembling and exchanging the bonds herein proposed to be refunded; (b) printing the said refunding bonds; (c) the representation of Second party (the county commissioner) in legal proceedings to validate said refunding bonds; (d) obtaining the approving opinion of nationally recognized bond counsel unon the procedure used for the issuance and validation of said Refunding Bonds, said counsel to be selected by First Party; (e) all other expenses in connection herewith which may be approved by First Party.'

Nor does the law permit the payment of money from the sinking funds of the county or districts as fees for a refunding agent. Pierce v. Isaac, 135 Fla. 101, 184 So. 669. When such an agent may legally be employed for services in no wise official in their nature, proper compensation for such service may be provided for as the law authorizes.

The refunding resolutions and contracts are not in accord with law, and the bill of complaint should not have been dismissed. This is a taxpayer's suit and not a bond validating proceeding.

Decree reversed for proper proceedings and decree."

In the companion case of *W. J. Howey Co. et al. v. Williams,* 195 So. 181, the court said:

"The law contemplates that all official authority, duties and functions shall be exercised and performed by duly commissioned officers; the delegation of official authority, duties or functions by officials to nonofficials is not permitted by the laws of this State."

Petition for rehearing was filed, and on April 2, 1940, the court rendered a second opinion in both cases, reported in 195 So. 184. From the majority opinion we quote the following:

> "The Howey opinion refers to the conclusions stated in the Taylor opinion as to the illegal provisions of the refunding contracts and resolutions.
>
> . . . . . .
>
> References in the Howey opinion to the refunding resolution and contract of 1939, which were in part quoted in the Taylor opinion, with conclusions thereon, made it unnecessary to quote or to cite in the Howey opinion similar provisions in the refunding contract and resolutions of 1935, the illegal provisions of the two contracts having the same effect, and the two cases were presented as companion cases."

Two members of the court in a concurring opinion held that the contract did not require the Agent "to perform official duties of the City", but only "to defray the expenses" and to be reimbursed therefor, and that the contract did not, in their opinion, vest the Agent with power "to manage or control official functions".

A second petition for rehearing was filed, and a third opinion was rendered by the Supreme Court of Florida, which is reported in 196 So. 214. This time the court unanimously affirmed its first opinion. The opinion goes even farther and holds that money which had been paid to the Agent by the county as compensation for services rendered by the Agent under the contract could be recovered because of the illegality of the contract under which it was paid.

It is not necessary in this case to determine whether the decision by the Florida Supreme Court that the contract in the *Taylor* case was void (1) because the Fiscal

Agent was a foreign corporation, or (2) was because the Fiscal Agent, at the time it entered into its contract with the City, was the representative or owner of a substantial portion of the bonds of the City, or (3) was because the contract required the Agent to perform "official functions which under the law of Florida could be performed only by the officials" of the City.

(1) If the contract of R. E. Crummer & Company (a Delaware corporation) with Lake County was illegal because the court was of the opinion that a foreign corporation could not act in the capacity of fiscal agent of a city (or county), then the contract of R. E. Crummer & Company with the City of Avon Park is void for the same reason.

(2) If the contract of R. E. Crummer & Company with Lake County was illegal because at the time the contract was made the corporation was already representing "a substantial portion of the bonds of the county", then the contract of R. E. Crummer & Company with Avon Park is also illegal, for it was not only representing a substantial portion of the City's bonds both before and after the contract was made, but it was also the owner of a substantial portion. After the contract was made, it purchased others. It was first agent for itself and other creditors, and then became Agent for the City, thus serving conflicting interests.

(3) If the contract of R. E. Crummer & Company with Lake County was illegal because it contemplated the performance by the corporation of "functions or duties which by law had been imposed upon officials of the" City and which could not be delegated, the contract of R. E. Crummer & Company with Avon Park is illegal for the same reason, because the duties and obligations of R. E. Crummer & Company under the two contracts are identical.

Section 10, Chapter 12514, enumerates the officers of the City. Section 19 requires an oath of office and furnishing of Surety bond. Section 24 gives the Council power to pass all ordinances for the government of the City, and Section 25 specifically gives the Council power to borrow money and issue bonds, which necessarily includes the administrative function of providing directly for the printing, approval, and other legal or fiscal matters. Section 17 provides for the election of a City Attorney, who shall perform all duties imposed by the charter and which are or may be prescribed by ordinance. (See Appendix A for excerpts from City charter).

Nor can it now be contended that the contract merely provided for reimbursement for expenses and services. The Vice President of R. E. Crummer & Company testified that it was "the duty of the Agent to complete the refunding and to perform all the technical services that had to be performed in order to accomplish this result" (p. 163). This statement of the Fiscal Agent is consistent with the testimony of the City officials, all of whom assumed that the Agent was required to perform such service (pp. 125, 126, 142, 155 and 158). All legal services, including preparation of resolutions of the City Council, validating proceedings, and conduct of this proceeding in bankruptcy, have been rendered by counsel for the Fiscal Agent. Since the contract has been so construed by the Fiscal Agent and the City, and since the record shows that the officials of the City performed no duties, and that the Fiscal Agent did perform those duties, it is not possible to construe the contract as involving only reimbursement and compensation. If the contract between R. E. Crummer & Company and Lake County was illegal because the contract delegated to a foreign corporation, which represented a substantial portion of the bonds, the performance of functions that by law were required to be performed by City officials, then the contract between that corporation and the City of Avon Park is also illegal.

All conditions that could possibly have rendered the contract with Lake County illegal are present here.

In the *Taylor* case, supra, payment for the services and reimbursement for expenses was an obligation of the county itself. In this case, the City agreed that the bondholders should pay the Fiscal Agent for its performance of official functions of the City. If the contract between the Fiscal Agent and Lake County was illegal, the contract between the Fiscal Agent and the City of Avon Park is illegal, and the decree of the District Judge confirming the Plan must be reversed.

Moreover, sub-section (a) of Section 403, 11 U. S. C. A., makes "legal authority (of the City) to carry out the Plan of Composition" a condition precedent to confirmation. The contract between the City and the Fiscal Agent (as the petition alleges) (p. 8) constitutes the "sole and exclusive plan of settlement". The City itself says that it is an integral part of the Plan. If the contract is illegal, the Plan is illegal, and the City has no authority under the law of Florida "to carry out the Plan". If Lake County could not legally pay for services rendered to it, because its contract with R. E. Crummer & Company was illegal, a Federal Court cannot coerce bondholders of Avon Park into paying the Fiscal Agent fees fixed by its illegal contract with the City, or compel them to deposit their interest claims in an escrow in which the Fiscal Agent will share, or else sell them to the Agent at a discount. Absence of authority on the part of the City to carry out its contract is fatal to this entire proceeding, and the District Judge would probably have dismissed the petition had the decision in the Florida Supreme Court been rendered prior to the date of the decree of the District Court.

POINT II.

By affirming the decree of the District Judge, the Circuit Court of Appeals of the Fifth Circuit held contrary to law that the bonds and coupons of the City which were owned by the Fiscal Agent, a foreign corporation, could be counted in determining whether the City had secured the consent of the required two-thirds of its outstanding debts, when it appeared without contradiction that the Fiscal Agent would profit by reason of its speculation under the terms of its contract with the City in the securities of its principal, the City of Avon Park, at the expense of other bondholders, and in a manner which inhibited the District Judge from determining that the compensation which the Agent would receive for its services was reasonable.

Sub-section (d) of Section 403, 11 U. S. C. A., provides that the "Plan of Composition shall not be confirmed until it has been accepted in writing by, or on behalf of, creditors holding at least two-thirds of the aggregate amount of claims affected by such plan". The Master's Report (p. 214 et seq.) finds that the total of principal claims allowed that had filed acceptances of the Plan, amounted to $627,-500., and that the total interest claims which had accrued to July 1, 1937, that had accepted, amounted to $207,766.66, —a total of both classes of claims of $835,266.66, which is more than two-thirds of the total debt. But, included in the list of claims allowed and accepting the Plan (p. 214 et seq.) are Nos. 10, 46 and 54, owned by the Brown Crummer Investment Company totalling $268,614.17, and Nos. 15, 45, 47, 52 and 53, owned by R. E. Crummer & Company, the Fiscal Agent, totalling $150,861.66. If we deduct the claims owned by the Fiscal Agent alone, from the total claims allowed and which have accepted, the total claims that have accepted is reduced to less than two-thirds of the aggregate claims outstanding. Since the decree of the court rests upon its finding (p. 244) that "the holders

of securities representing more than 66⅔% of the aggregate amount of claims of all classes affected by the plan have filed consents to the said plan in writing", and since the court is by statute (Sub-section (d), Section 403, Title 11 U. S. C. A.) prohibited from confirming the Plan unless that fact be true, it is apparent that if the claims owned by the Fiscal Agent had not been counted by the Master in the number that have accepted the Plan, the decree of confirmation would not have been entered. It is a fundamental principle of bankruptcy that "equality between creditors is necessarily the ultimate aim of the bankruptcy law, and to obtain it we must regard the essential nature of transactions, not their forms". *Clarke v. Rogers*, 228 U. S. 533, 57 L. ed. 953. Composition in bankruptcy rests upon a contract between the debtor and a majority of its creditors, and all creditors shall be treated alike. If the consent of any creditor to the acceptance of the composition has been obtained by reason of special advantage that would inure to him from a decree of confirmation, his acceptance should not be counted. If the consent of two-thirds has not been obtained except by the granting or promising of some special advantage or consideration to one or more creditors, the composition cannot be confirmed.

At the time the Fiscal Agent entered into its contract with the City, the first Act relating to municipal bankruptcy had been declared void, and the present Act had not been passed. The Vice President of the Fiscal Agent testified that the contract "contemplated a voluntary exchange" (p. 195). Under the terms of that contract, the only bondholders who would have been assessed for the expense of the proceeding were the "security holders who accept refunding bonds under the terms hereof" (p. 36). The only bondholders who would have been required to sell their interest claims to the Fiscal Agent by Section 10 of the contract (p. 37) were those who agreed to accept refunding bonds. In the Plan, those holders to be assessed are referred to as "participating holders" (p. 24).

The amended Plan (Section 8, p. 95) filed after the bankruptcy proceeding had been instituted, also provides that the Fiscal Agent shall assess charges against "participating bondholders" or "bondholders participating in the Plan". Under neither plan did the City assume any obligation to pay the Refunding Agent; both the original Plan (Section 8, p. 36) and the amended Plan (Section 9, p. 95) say that "such charges being a matter wholly between the Fiscal Agent and the bondholders participating in the Plan".

Before the contract was executed, many creditors had instituted suits against the City for judgments, and had obtained writs of mandamus, some as early as 1936, (pp. 46-48), requiring the levy of taxes to pay their judgments. The City failed or refused to levy the taxes ordered by these writs (p. 179). The Fiscal Agent itself had instituted such a suit, which, it says (p. 175) was first contested, but after the contract was made, was uncontested. On October 8, 1938, the City filed a petition (p. 42) asking the District Court to stay the suits of "litigating creditors", and obtained an order granting the petition (p. 45). But the suit brought by the Fiscal Agent was not included in the injunction. On the contrary, the City levied a tax for the payment of the claim of the Fiscal Agent. The testimony of Mr. Reddick, the City Clerk, (p. 129) is that the levy was made in the Fall of 1937. In 1938, a levy was made "under the Plan" for Refunding Bonds that have never been issued. Such levy could not, under the law of Florida legally be made until after the refunding bonds had been issued or contracted to be issued. *Potter v. Lainhart*, 44 Fla. 647, 33 So. 251, *Osborne v. Stripling*, 81 Fla. 375, 88 So. 265. When the Vice President of the Fiscal Agent was examined as to this, (p. 179) he admitted that he knew no levies had been made for other "litigating creditors", but denied that this was the result of an agreement between the Fiscal Agent and the City. He also admitted that money had been collected by the City from

the levy for the Agent. This money was still held by the City, *but existence of the fund was not disclosed in the Plan of Composition.*

The Court will note that the total of claims Nos 46 and 47, which are covered by judgments, is substantially equal to the total claims of all judgment holders (p. 46-47) who were enjoined, except those of Rittenoure, United Mutual, Sweet and Babson, none of which have accepted the Plan, and the judgment of Security Benefit, which is listed as having consented.

The Fiscal Agent purchased these judgments, though no tax levies had been made for them, and after purchase executed its acceptance of the Plan in their behalf. At the first hearing before the Master, petitioner objected to the proof of claims on these judgments (p. 107-8), but its objections were over-ruled.

These judgments must have been bought after bankruptcy proceedings were instituted, though the record does not disclose when, because the petition to enjoin them was not filed until October 1938 (2 months after the petition was filed). Mr. Jollay acted as attorney for the City in securing this injunction against all suits except that of the Fiscal Agent.

The resolution of the City Council to invoke bankruptcy was passed in May, 1938 (Exhibit C, p. 39). Mr. Lassiter says (p. 195) that this was found necessary "because of the objection of certain litigating creditors to acceptance of the voluntary Plan". Hence, it is reasonable to assume that the Fiscal Agent purchased these claims in order to obtain for the City acceptance of the Plan, and enable the City to show the consent of holders of more than two-thirds of the claims, as required by statute. The judgment creditors, having been unable to compel the City to perform the mandates of the courts requiring the levy of taxes, were probably glad to sell out.

The contract of the Fiscal Agent with the City (p. 36) required it to obtain the consent of the holders of 75% or more to the voluntary Plan within one year. Since only 69% have consented (Master's Report, p. 224), without an amendment of the contract the Fiscal Agent would not have been entitled to assess the consenting bondholders, much less those that did not consent. But a decree of confirmation would be binding upon all creditors. Under these circumstances, we can understand why it was found necessary "to institute bankruptcy proceedings", and also why judgments of "litigating creditors" were purchased.

With no further explanation of this situation, the Court must assume that the claims of judgment creditors were purchased for the purpose of obtaining the consent of the required percentage which would enable the Fiscal Agent and the City to bind all creditors to the Composition, and make them comply with the terms of the same. The amended Plan (pp. 95-99) Section 8, provides for the assessment of "participating bondholders" only. But by the decree confirming the Composition, all creditors are assessed; it enjoins all holders of bonds, judgments, etc, from instituting suits, or from prosecuting them, or taking action to enforce the payment of the same (p. 248), and specifically provides that "upon final decree herein (they) shall be bound thereby in the same manner as all other creditors affected by said Plan of Composition" (p. 249). Paragraph B of the amended Plan (p.95) provides that "evidences *of all interest* accrued to July 1, 1937 shall be deposited in escrow". Paragraph 11 of the decree (p. 250) orders the appointment of an escrow agent, and Paragraph 12 directs the City to take the steps necessary to carry out the Plan. The result of the decree, therefore, is to require *every creditor*, whether a "participating" one or "one who accepted the Plan" or not to deposit their interest claims with the escrow agent and to pay the fee of $40. per bond, or to assign their certificates of deposit in escrow to the Agent, and pay a fee of $20. per bond.

In other words, the purchase of claims by the Fiscal Agent, and its acceptance of the Plan on their behalf, made it possible for the Agent and the City to enforce the terms of the modified Plan by a decree of court, which without purchase they could not have done, and enables the Agent to collect fees from *all bondholders* which was not contemplated by its contract with the City. (Ex. B. p. 36.)

Nowhere in the decree is there anything to indicate that non-consenting bondholders are not bound by the provisions of the modified Plan requiring the deposit or sale of the interest claims. If all interest claims must be deposited, all bondholders must pay the fees to be paid. The decree, therefore, will enable the Agent to collect compensation that its contract with the City did not contemplate or authorize. That plan was "a voluntary adjustment", and even the modified Plan (Section 8) provides that assessments shall be paid only by "participating bondholders".

Summarizing the situation: the contract required the Agent to carry out a voluntary refunding; it was to be compensated by assessing holders who accepted refunding bonds under the terms of the Plan. The modified Plan, (Sec 8, p. 95) by using the same language used in Sec. 8 of the original Plan (p. 24), limited compensation of the Agent in the same way. But through the purchase by the Agent of enough claims, the City obtained acceptance by the required two-thirds, and the decree of confirmation assesses charges against all bondholders, consenting and non-consenting, and compels all bondholders to deposit their interest claims in an escrow which includes the claims purchased by the Fiscal Agent before and after bankruptcy, or else to sell their claims at a discount to the Fiscal Agent. That the profit expected to be earned by the Fiscal Agent through speculation in bonds and coupons is a vital part of the consideration the Agent expects to receive, cannot be denied. Such an implication runs through the entire

testimony of Mr. Lassiter. It appears in the artificial debt structure, in the original Plan to force other holders to sell their coupons at a discount, in the modified Plan that places a higher charge on those who wish to speculate for their own account, as well as in the decree which orders the deposit of *all* evidences of interest with an option of sale to the Agent. Sub-section (b) Section 403, which authorizes allowance of compensation for services rendered, limits it to a "reasonable" one. Since it is impossible to determine what amount will accrue to the Agent from this speculation, and there is not even evidence that this profit would be a reasonable sum, the finding by the court that the compensation provided by the Plan is reasonable, necessarily refers solely to the per bond fees; otherwise it is unsupported by facts.

Under these circumstances, without any statements to the contrary by representatives of the City or the Agent, the Court must conclude that purchase of the claims was for the express purpose of enabling the Agent to assess all bondholders, which it could not do under its contract, and that this was the consideration for their purchase. Equity and the rules applicable to composition and bankruptcy, require that the Court should refuse to confirm a composition procured under such circumstances.

In the case of *In re E. T. Kennedy Co.* 136 F. 451, the court refused to confirm a composition, where it appeared that a committee of creditors had purchased claims for the purpose of buying the property of the bankrupt from the trustee in order to resell the property so purchased for the interest of the creditors who transferred their claims to the committee. The court held that this combination of creditors for the control of judicial proceedings was clearly against public policy.

In *In re Weintrob,* 240 F. 532, the court refused to count a claim which had been purchased to obtain the

necessary 50% where the claim was purchased for the full amount and voted in favor of acceptance of the composition.

In *In re M. & H. Gordon,* 245 F. 905, the court held that no creditor "shall have any advantage, secret or otherwise, over the other" and refused to confirm a composition which involved an agreement on the part of the bankrupt to pay one creditor his expenditures for investigating the financial affairs of the bankrupt, because it would open the door to preferring one creditor above another.

In re Kinnane Co. 221 F. 762, holds that a majority cannot, by accepting a composition, acquire a priority or preference over the dissenting minority.

In *In re Griffith Stillings Press,* 244 F. 315, it was held that the assent of a majority of the creditors was not conclusive on the court if such assent was affected by other considerations.

In *Fairbanks v. Amoskeag Nat. Bank,* 38 F. 630, the court refused to confirm a composition which had been consented to as a result of an agreement by the bankrupt to pay one of his creditors a sum in addition to his pro rata distribution if he would secure the consent of other creditors to the composition. In that case, the creditor bought a number of claims, paying a larger sum than the percentage provided in the composition, and voted them in favor of the composition.

Mr. Lassiter (p. 202-203) said that the price at which the Agent bought these judgments "was in most cases higher than the then current prices for the bonds themselves".

The Municipal Bankruptcy Act requires acceptance by creditors before the petition can be filed. But that does

not change the principle of these decisions; — that the acceptance must be free and uninfluenced, and cannot be obtained by considerations other than the consideration offered to all creditors in the plan of composition. Even though, as the Circuit Court of Appeals held, a plan may provide for the assessment of the expense of the proceeding against creditors, it is none the less inequitable for consent to be obtained through the purchase of non-consenting claims by the Fiscal Agent, which was under a duty "to attempt to complete a refunding of the indebtedness" (p. 163). A consent so obtained is not such a free and uninfluenced act as is required by the terms of the statute.

POINT III.

The decision of the Circuit Court of Appeals of the Fifth Circuit affirming the decree of the District Judge is in conflict with the decision of this Court in the Los Angeles Lumber case, 84 L. ed. 22, because affirmance was predicated solely upon its previous opinion in Vallette v. City of Vero Beach, 104 F. (2d) 59, and its opinion in that case appears to have been influenced by the fact that "the vast majority of the creditors of the City had consented", although the court in its opinion admitted that speculation by the Agent in obligations of its principal (the City) "might lead to discontents or even scandals", a contingency not contemplated or permitted by the Act of Congress authorizing this procedure.

The decision by the Fifth Circuit Court of Appeals rests solely upon the authority of its earlier opinion in *Vallette v. City of Vero Beach,* supra, in which we find the following statement:

> "Grave questions are made touching the compensation of the Fiscal Agent, and its reimbursement for expenses in connection with the plan * * *. As was the Judge (the District Judge) we are troubled by the element of speculation on the Agent's

> part in the old coupons * * * . This may lead to discontents or even scandals, and we do not in principle approve it, but will not over-rule the Judge at this stage of the proceedings and on an imperfect record of what happened before him".

Under these circumstances, it cannot be doubted that in this case also the court was influenced largely, if not controlled, by the fact referred to in the *Vallette* case, that "the vast majority of the creditors had approved the Plan". This approval should not have influenced the decision of the court. Under the opinion of this Court, *Los Angeles Lumber Co.*, supra, the duty imposed upon the District Court is to find that a plan is fair and equitable. In this case, the number consenting, if we exclude the claims owned by the Fiscal Agent and the Brown-Crummer Investment Company, would have been only $415,791. principal and interest out of a total principal and interest claims as of July 1, 1937, amounting to $1,223,757.

The new principal indebtedness of the City will amount to over one and one-quarter million dollars, (less interest paid under the escrow) of which the two Crummer Companies will own over $400,000. The Fiscal Agent would under its contract be vested with "exclusive authority" to act for the City in all matters relating to the refunding for a period of 3 years. Under this clause, control which the Fiscal Agent has exercised over the financial affairs of the City in the past will be extended in time by the large proportion of the debt owned or controlled by it.

Your petitioner not only is fearful, as was the Circuit Court of Appeals, of the effect of speculation by the Agent in the old bonds and coupons purchased by it, but also of the effect of speculation in the new refunding bonds which are to be retired by the City at discounts from their face through the use of the sinking fund under the terms of the Plan.

V.

CONCLUSION

In conclusion, we submit that:—

1. Since the contract is illegal under the laws of the State of Florida, the City has no authority to carry out the terms of the Plan; it is impossible to separate the contract from the Plan, and approval of the Plan necessarily carries approval of the illegal contract.

2. The City has not obtained the free and unbiased acceptance of the Plan by two-thirds of the aggregate outstanding claims, because a large part of the claims that accepted the Plan are owned by the Fiscal Agent of the City, which will receive benefits other than those that accrue to creditors generally. In the absence of testimony to the contrary, this fact is presumed to have influenced its consent.

3. The Plan did not provide that non-participating or non-consenting holders of bonds should be assessed or required to deposit their coupons with the escrow agent. Hence, the decree of the court is broader than the Plan of Composition proposed.

4. The Plan itself is impossible of accomplishment according to its terms, and creditors should not be required to accept obligations that the City admittedly does not intend to perform.

Respectfully submitted,

Giles J. Patterson

Attorney for Petitioner

Sec. 10. The government of the city shall be carried on by the following officers: a Mayor, a City Council consisting of five members, a Superintendent of Public Works, a Chief of Police, a City Clerk and Collector, a City Assessor, a City Auditor and Comptroller, a City Attorney, a Chief of the Fire Department, and such other officers as may be created by ordinances of the city not inconsistent herewith, and they shall perform such duties and receive such compensation as may be prescribed by the ordinances of the city not inconsistent with this charter; Provided, that the Superintendent of Public Works, the Chief of Police, the City Clerk and Collector, the City Assessor, the City Auditor and Comptroller, the City Attorney, and the Chief of the Fire Department, shall be elected by the City Council upon its organization and at its first regular meeting after the general election called and held pursuant to the provisions hereof and the city ordinances, and that all other officers of said city shall be appointed by the Mayor and confirmed by the City Council or elected by the City Council as herein provided; provided further, that the Mayor may in his discretion, in case of emergency to be determined by him, appoint, subject to the confirmation of the Council, a City Auditor and Comptroller who is not a qualified elector of the city. The same person, except the Mayor and members of the City Council, may hold more than one of said offices.

Sec. 17. There shall be elected by the City Council of the City of Avon Park at the first regular meeting in January succeeding the general city election a City Attorney whose term of office shall be for a period of two years; and who shall perform all of the duties imposed upon him by the provisions of this Act, and which are now prescribed or which may hereafter be prescribed by the city ordinances.

Sec. 19. All officers of said city shall before entering upon the discharge of their duties, take and subscribe an oath before some person authorized to administer oaths, that they are entitled to hold the office to which they have been elected or appointed, and shall give bond in such sum as may be required by the City Council, said bond to be

signed by some reputable and duly authorized Security or Guaranty Bonding Company, said bonds to be approved by the City Council, provided, however, the Mayor and members of the City Council shall not be required to give bond.

Sec. 24. That the City Council shall have the power to make, establish and ordain for the Government of said city, and the officers of said city, such ordinances in writing and such by-laws and rules or order not inconsistent with this charter, the Constitution and Laws of the United States and the State of Florida as they may deem necessary; provided, a majority of the City Council shall assent thereto. (Then follows specific enumeration of types of ordinances.)

Sec. 25. The City Council shall have full power to pass such ordinances as it may deem proper for the government of said city, and shall have special power to borrow money by bonding the city for any of the following purposes: first, to improve streets and sidewalks; second, to establish waterworks and fire protection; third, to establish gas or electric light system; fourth, to establish a sewerage system and disposal; fifth, to erect a city market building; sixth, to purchase or erect a school; seventh, to establish a street railway system; eighth, to provide a park or parks and improve the same; ninth, to purchase or erect a city hall or other public building; tenth, to establish and maintain public play grounds and athletic fields; eleventh, for funding and refunding outstanding indebtedness of said city; twelfth, to purchase, establish and maintain tourist camps and buildings, to purchase, construct and maintain any project that the Council may deem of benefit or importance to the citizens of the City of Avon Park.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. [redacted] 31

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

CITY OF AVON PARK, FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT J. PLEUS,
Counsel for Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 814

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

CITY OF AVON PARK, FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

Reference to Opinion of Court Below

The opinion of the Circuit Court of Appeals rendered January 31, 1940 has now been reported in 108 F. (2) 1010.

II

Statement as to Grounds of Jurisdiction

It is admitted the Court has power to grant the writ, but the question of propriety in so doing is strenuously urged:

The decision of the Circuit Court of Appeals is not a final judgment or decision, but is merely an affirmance of an interlocutory decree. The Statute (Bankruptcy Act, Chapter IX, 58 Stat. 653, 11 U. S. C. 401, et seq.) is plain:

Section 83 (e) provides specifically for the District Court to "enter an interlocutory decree confirming the plan". Section 83 (f) makes such interlocutory decree binding only when and if the consideration to be delivered to creditors under the terms of the plan shall be made available for the creditors, and provides that "thereupon the Court shall enter a final decree * * *." Section 83 (g) makes a certified copy of only the final decree evidence of jurisdiction, regularity of the proceedings and the fact that the decree or order was made.

That the District Court merely entered an interlocutory decree is obvious from the record (R. 237), and jurisdiction was specifically retained (R. 251).

The appeal to the Circuit Court of Appeals was solely and only from "the Interlocutory Decree entered herein June 19, 1939" (R. 252).

And to clinch the proposition, counsel for Petitioner (Brief, page 25) asks this Court to take jurisdiction, as otherwise "the District Court would proceed to final decree * * *."

There is nothing in the record or the petition and supporting brief to make of this an extraordinary case, taking it out of the well-established rule, consistently adhered to by this Court, that the power to issue writs of certiorari to review interlocutory decrees or orders is to be exercised only in "extraordinary cases", and the fact of a non-final judgment is, of itself, sufficient ground for the denial of the writ.

As stated in *American Construction Company vs. Jacksonville T. & K. W. Ry. Co.*, 148 U. S. 372, 13 Sup. Ct. 758, 37 L. Ed. 486:

> "Clearly, therefore, this court should not issue a writ of *certiorari* to review a decree of the Circuit Court of Appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause."

To like effect, see:

The Conqueror, 166 U. S. 110, 113, 17 S. Ct. 510, 41 L. Ed. 937;

Panama Railroad Co. v. Napier Shipping Co., 166 U. S. 280, 284, 17 S. Ct. 572, 41 L. Ed. 1004;

Hamilton-Brown Shoe Co. v. Wolf Brothers & Co., 240 U. S. 251, 258, 36 S. Ct. 269, 60 L. Ed. 629;

City and County of Denver vs. New York Trust Co., 229 U. S. 123, 133, 33 S. Ct. 657, 57 L. Ed. 1101;

Hanover Star Milling Co. vs. Metcalf, 240 U. S. 403, 408, 409, 36 S. Ct. 357, 60 L. Ed. 713;

The Three Friends, 166 U. S. 1, 49, 17 S. Ct. 495, 41 L. E. 897.

III

Statement of Case

We merely list the following corrections of inaccurate statements contained in the Petition:

(a) R. E. Crummer & Company was neither organized by The Brown-Crummer Investment Company, nor was it organized exclusively for the purpose of representing clients of the latter company (R. 193).

(b) At no time, whether prior to or subsequent to July 17, 1937 did the two corporations named either own or rep-

resent a substantial portion of the bonds of the City of Avon Park, which were then outstanding—the record is that a substantial portion of the bonds now owned by these companies were acquired prior to July, 1937 (R. 169).

(c) The Fiscal Agent was not appointed as such "to effect a refunding" of the indebtedness of the City; rather, it was solely and only on its part to "endeavor to accomplish a refunding, by a par for par exchange * * *." In other words, it was a "best-efforts" contract.

(d) The contract in no manner required R. E. Crummer & Company to perform any of the services as listed on page 2 of the petition, but merely provided that it would "defray all expenses incident to" such services (R. 35).

(e) The record is utterly silent that the proceedings in bankruptcy were initiated at the instance of the Fiscal Agent, but rather the same were initiated by proper action of the governing authority of the City involved (R. 39).

(f) The record is likewise utterly silent that the Fiscal Agent managed, controlled or performed any official function whatsoever of the City.

(g) The option given creditors did not call for a purchase by the Fiscal Agent at "one-third of their value" of claims representing interest accruals (Petition, page 4), but rather at one-third of their *face* value—two entirely different criteria of value.

(h) The "profit", which the Fiscal Agent receives, is nothing more than compensation duly and properly allowed in accordance with Chapter IX of the Bankruptcy Act.

IV
ARGUMENT

Three errors are assigned and will be answered in order:

1. That the decision of the Circut Court of Appeals is contrary to the law of Florida, as announced by the Supreme Court of that state in Taylor vs. Williams, decided February 23, 1940, and found reprinted on pages 9 to 19 of the petition.

It should be sufficient to advise the Court that this is not a final decision by the Supreme Court of Florida, but is now resting on rehearing, petitions for such rehearing having been filed by all parties to the litigation.

Secondly, the Taylor case involved a county and not a city and the specific distinction was made by the Supreme Court of Florida (Petition, page 12).

The Taylor case did not hold the contract illegal or void, nor that under such contract was the Fiscal Agent "managing or controlling any of the official functions involved in the issuing of refunding bonds."

The Taylor case did hold that such Agent could be employed "for services in no wise official in their nature", and could be compensated therefor.

The contract with the City of Avon Park is not an integral part of the plan, the Agent is not called upon to perform any official duties of the City, but merely defrays certain expenses.

The Taylor case did not enjoin the issuance of any refunding bonds, but, on the contrary, the opening statement (Petition, pages 9 and 10) shows that it was merely to enjoin the levy and collection of taxes, and that it was not a bond validation suit. The concluding sentence of the Court likewise makes the distinction (Petition, page 19).

No part of the Fiscal Agent's commission in these proceedings is to be paid by the unit, the District Court found the same to be reasonable in accordance with the Statute allow-

ing it so to do, and to apportion the same "among the parties to the proceeding as may be just". (Chapter IX, Section 83 [b])

2. *That the decision of the Circuit Court of Appeals is contrary to applicable decisions of this Court.*

It should be enough to point out that no such decisions of this Court are cited.

3. *That the Circuit Court of Appeals has decided a federal question in a way probably in conflict with the decision of this Court in Case vs. Los Angeles Lumber Co.*, 84 L. Ed 22 (Adv. Sheet).

The theory of petitioner's argument is that because the Circuit Court of Appeals relied upon its own decision in the case of *Vallette vs. City of Vero Beach*, 104 F. (2) 59, Cert. Den. 84 L. Ed. 87 (Adv. Sheet), it impliedly reaffirmed its holding in such case that the consent of the vast majority of creditors to the composition strongly supported the action of the District Judge; and that such consent is no proof that the plan is fair and equitable under the decision of this Court in *Case vs. Los Angeles Lumber Company*, supra. Of course, if the Circuit Court of Appeals held no such thing in the Vero Beach case, the predicate for the argument falls. The language used by that Court in such case is unambiguous:

> "The vote of the creditors upon the plan does not at all bind the Judge in finally allowing compensation."

Thus, the Court followed exactly the rule announced in the Los Angeles Lumber Company case, supra. It is significant also that no element of unfairness is seriously argued.

It is therefore respectfully submitted that the Petition for Writ of Certiorari should be denied.

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Attorney for Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1940

No. 31

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

CITY OF AVON PARK, FLORIDA

Respondent.

BRIEF OF RESPONDENT

ROBERT J. PLEUS,

Attorney for Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1940

No. 31

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

CITY OF AVON PARK, FLORIDA

Respondent.

BRIEF OF RESPONDENT

Statement of the Case

The City of Avon Park, located in Highlands County, Florida, which is in the South Central portion of the State, had issued its general obligation coupon bonds bearing an average six per cent interest rate to such extent that on July 1, 1937, there was outstanding a total of $1,223,751.76. Of this amount past due and unpaid interest to such date amounted to $358,251.76, the balance of said amount being represented by principal, of which $183,000 had matured. (R. 87).

There is no dispute that the City was hopelessly unable to pay its debts as they matured. Many of the past due items

had already been reduced to judgment, and the City was harassed by litigation (R. 11-13). The assessed valuation had fallen from its peak in 1927 of $9,814,220 to $2,504,087 in 1937 (R. 7). This was brought about, not only by the crash of the now famous "boom", but likewise general economic conditions (R. 116).

Finding itself in this plight, the City entered into a contract under date of July 17, 1937 with one R. E. Crummer & Company, wherein and whereby the said company agreed to "endeavor to accomplish a refunding, by a par for par exchange, of the" said funded indebtedness (R. 28). The said contract set forth the indebtedness sought to be refunded and the terms thereof. In general it was contemplated that the refunding bonds to be authorized and issued by the City would bear a scaling interest rate beginning at 2% for the first two years, 3% for the next succeeding six years, 4% for the next succeeding seven years, and 5% thereafter At no time was the interest rate ever to reach the original six per cent, which latter rate prevailed as to all original bonds except one $30,000 issue of June 1, 1916 (R. 28). The new bonds were to be optional, the tax levy requirements for interest and sinking fund purposes were set forth, and the City obligated itself to take such action as might be necessary to consummate the refinancing program involved. The costs of such program were to be borne by assessing charges against the security holders who would accept the refunding bonds (R. 36), and the contract was to run for a period of three years (R. 36).

It must be remembered that the outstanding original bonds were all non-callable, and bankruptcy action was not available to the City and its creditors at such time because of the decision of this Court in the case of *Ashton vs. Cameron County Water Improvement District*, 298 U. S. 513, 56 Sup. Ct. 892, 80 L.

Ed. 1309, decided May 25, 1936, holding unconstitutional the original Municipal Debt Adjustment Act, 48 Stat. 798, 11 U. S. C. Sec. 301. The present Act under which these proceedings are brought was not enacted until August 16, 1937, 50 Stat. 654, 11 U. S. C. Sec. 401, et seq; and it was not until the decision of this Court in *U. S. vs. Bekins*, 304 U. S. 27, 58 Sup. Ct. 811, 82 L. Ed. 1137, decided April 25, 1938, rehearing denied May 23, 1938, that effective procedure under the Bankruptcy Act was assured.

Thus it was that the contract of July 17, 1937, was entered into wholly upon the basis of a best efforts arrangement looking toward a voluntary exchange through the efforts of the Fiscal Agent in persuading the holders of the outstanding non-callable bonds bearing a high interest rate to voluntarily relinquish the same for lower interest rate bonds having a longer maturity. There was no guarantee on the part of the Fiscal Agent, and it merely agreed to endeavor to accomplish the refunding on the basis agreed upon.

It immediately set to work to accomplish the desired result, and two days before the decision of this Court in the Bekins case, supra, the City promulgated what was known as a "Refunding Plan" (R. 16). The said refunding plan was adopted wholly separate and apart from the contract with the Fiscal Agent, and merely incorporated therein the terms of the offer of settlement and adjustment made thereby to creditors. The plan set forth the manner in which the expense of the refunding operation was to be paid, and the same was to be done by means of an assessment against "bondholders participating in the plan". Such assessment was to be two per cent of the principal affected, with a ratable portion thereof in case of bonds of less than $1,000.00 denomination (R. 24). Such assessment against bondholders was solely for the purpose of defraying the necessary expenses of the Fiscal Agent, and to

reimburse it for its services and the expenses which it had agreed to defray insofar as the City was concerned (R. 23). Thus, when the original contract was signed, bankruptcy action was neither contemplated nor certain under existing laws and decisions.

Following the decision of this Court in the Bekins case, supra, and due entirely to the non-consent of certain recalcitrant, litigating creditors, of whom the Petitioner is one, (R. 195) bankruptcy action was taken by the filing of a petition on August 15, 1938. The refunding plan, adopted April 23, 1938, was made the basis of the original petition (R. 16).

In objection to the proceedings appeared certain creditors, among them the Petitioner here, and the said Petitioner filed its answer (R. 63), and its amended answer (R. 70) to the original petition, and said answer presented the sole issues and objections which Petitioner raised in the Court below. Those issues and objections are now sought to be enlarged and expanded, and it is submitted that Petitioner is bound thereby.

Furthermore, in order to remove the objections so raised, a modified plan of refunding was adopted by the City on February 3, 1939 (R. 86) and submitted to the Court by petition of the City on February 28, 1939 (R. 82), and allowed to be filed by the Court by order dated February 28, 1939. To such modified plan, and the petition submitting the same, no objections were filed by Petitioner, nor was any answer filed thereto. There is, therefore, at the outset the serious question presented of whether or not the Petitioner has any standing to object to the said modified plan. Testimony was taken, and a full and complete hearing had before the Special Master, and his report filed (R. 101, et seq.). The Master made findings of fact and announced conclusions of law (R. 218, 225); exceptions to his report were filed by Petitioner (R. 231). Such

exceptions centered around the method of compensating the Fiscal agent and its right to be considered a creditor entitled to consent to the plan. Thus, no question was raised as to the validity of the fiscal agency contract, or its bearing upon the plan; nor was any question raised that the compensation allowed the Fiscal Agent for its services and expenses was exorbitant.

Upon the Special Master's report coming in, the District Court confirmed the plan by interlocutory decree dated June 19, 1939 (R. 237). Appeal was taken to the Circuit Court of Appeals of the Fifth Circuit (R. 251), and by decision rendered January 31, 1940, 108 F. (2) 1010, the District Court was affirmed (R. 267).

Argument

We submit that because of the utter inconsistency between specifications of error numbered 1 and 2, it is impossible to argue them separately. Joining the two together, we find that Petitioner asserts first, that the fiscal agency contract between City of Avon Park and R. E. Crummer & Company is an integral part of the plan, and being void under the holding of the Supreme Court of Florida in the case of *Taylor vs. Williams*, ...Fla....., 195 So. 175, 195 So. 181, 196 So. 214, such plan could not be confirmed; and second, that because of the agency relationship created by the void contract, the Fiscal Agent was disabled from having its securities counted in determining the required percentage of consents, and was likewise disabled because of such agency from receiving compensation in the manner provided in the plan.

The utter inconsistency of these two positions is readily apparent: If the fiscal agency contract is void, as contended for by Petitioner, no agency relationship was created thereby, and

the purported fiscal agent is nothing more than a mere creditor; and as such creditor is entitled to compensation for services rendered in connection with the development and consummation of the bankruptcy proceedings.

In other words, the whole gravamen of Petitioner's complaint under the second assignment is that because of an agency relationship the securities of the Fiscal Agent could not be counted, and because of such agency relationship the Fiscal Agent was precluded from its compensation in the manner provided in the plan. The question of the purchase of the securities and the speculative feature so much indulged in by Petitioner will be discussed later.

The Act, as it read at the time of the Interlocutory Decree herein, is clear as to the allowance of compensation. It specifically authorizes the Judge to

> "allow * * * the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining tne deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceedings as may be just: *Provided, However,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner, except in the manner and in such sums, if any, as may be provided for in the plan of composition." 11 U. S. C. 403 (b).

Thus, there can be no question that compensation may be paid to any person, whether an agent of the Petitioner, or

an agent or representative of creditors, or a creditor himself, for services rendered and expenses incurred in connection with the proceedings. The proviso, as stated by the Circuit Court of Appeals, Fifth Circuit, in *Vallette vs. City of Vero Beach*, 104 F. (2) 59, 124 A. L. R. 686, (Cert. Den. 84 L. Ed. 87, 60 Sup. Ct. 110):

> "does indicate that it is not inappropriate for the plan to deal with the matter of compensation, the allowance being at last the Act of the judge. The vote of the creditors upon the plan does not at all bind the judge in finally allowing compensation."

The amount of debt involved aggregated $1,223,751.76. The compensation allowed and approved by both the lower courts was to be apportioned against the creditors by assessing a four per cent charge based upon the principal items only. Such principal items aggregated $865,500.00, and such four per cent charge would aggregate $34,620.00 (R. 201). Such charge amounts to approximately 2.8 per cent of the total debt involved in return for which the Fiscal Agent defrayed all expenses incident to the refinancing operation, prepared the plan, obtained the consents, furnished special counsel in the bankruptcy proceedings, which have now gone through two lower courts to this Court, defrayed the expenses of printing and validating the refunding bonds, and obtaining the opinion of general market attorneys, and likewise paid the expenses of certain special litigation to determine the taxability of certain lands due to an extremely complicated situation brought about by the change in area of the City. (R. 35, 163, 199).

The original plan provided for the sale of the accrued interest items at the rate of 33⅓ per cent of face to the Fiscal Agent (R. 25), which, when refunded into the new refunding bonds, would be held by the Fiscal Agent subject to purchase by the City at not exceeding 50% of the face thereof for

the first six months, 60% for the next succeeding six months, 70% for the next six months, and 75% for the next six months.

Due to the ruling of the District Judge in the Vero Beach case, (as referred to by the Circuit Court of Appeals in *Vallette vs. City of Vero Beach,* supra,) the plan in the case at bar was changed to meet that objection (R. 197), and as so modified and confirmed, it provided for compensation of the Fiscal Agent to be four per cent of the principal debt, with the right of any creditor who desired so to do, to sell to the Fiscal Agent his interest accruals at the agreed figure of 33⅓ per cent of face; and in such latter event, the charge against him was reduced from four per cent to two per cent of the principal of his bonds (R. 99). In order to protect the interest of the unit in its right to a guaranteed purchase price (R. 198) for such securities as could be bought by the proceeds of delinquent taxes, the interest items were to be escrowed and made available to the City for the same period of time as contemplated by the original plan, and the sale price was to be the same. (R. 97). Thus was provided the mechanics whereby the interest accruals could be, in effect, offset against the delinquent tax bill which the City had against its taxpayers on account of taxes levied for the years 1936 and prior (R. 95); and at the same time providing the means whereby, wholly at the voluntary option of each particular creditor, he would be given the right to liquidate at an agreed cash figure his delinquent interest claim—such price being guaranteed by the Fiscal Agent, and such price being the approximate cash market value thereof. (R. 199).

Hence, we have present the confirmation by the two lower courts of a modified plan of composition which, in effect, allows compensation in the amount of $34,620.00 on account of all costs and expenses incident to the settlement of a debt problem involving $1,223,751.76; which compensation is the maximum that can be realized by the Fiscal Agent. A particular

creditor may agree to sell to such Fiscal Agent at an agreed price, certain interest items which such creditor may own; in which event, if such securities increase in value, "profit" may be derived by the Fiscal Agent; but in the event of a drop in market value, the Fiscal Agent might suffer substantial loss. However, the creditors, not only have the option given them of realizing cash at the approximate market value of their delinquent securities, but they likewise have the right to enforce the payment of the agreed price. (R. 199.) Such creditors are under no coercion to sell to the Fiscal Agent, but may sell to anyone else, or may retain the interest items for themselves; but the Fiscal Agent has assumed the responsibility of guaranteeing the price that it will pay. Thus, whatever element of "speculation" there may be is presented, first, at the option of each particular creditor as to the items he owns, and second, is nothing more nor less than the speculation which could be brought about by any person going into the open market and purchasing securities. The allowance of the compensation has nothing to do with whatever speculative feature as to a rise or fall in the market there may be. The hearing covered the element of compensation, the master approved it, the District Judge confirmed and the Circuit Court of Appeals affirmed. Even in this Court, there is no criticism whatsoever of the amount that is the maximum that will be realized. Only as to the so-called speculative feature is complaint made, and when it is seen that that speculation is subject to either profit or loss and is a privilege open to all creditors alike by resort to market operations, such criticism falls of its own weight.

It is extremely significant that when the Chandler Act, approved June 22, 1938, c. 575, sec. 1, 52 Stat. 840, was adopted, there was placed in Section 249, Chapter X, on Corporate Reorganizations, the provision disabling a person from

receiving compensation in proceedings under said Chapter X, unless such person should file with the Court a statement of his ownership in claims and securities acquired or transferred by him after the commencement of such proceeding. This section likewise provided that no compensation or reimbursement would be allowed a representative or fiduciary who at any time after assuming to act in such capacity had purchased or sold claims or stock of the debtor without the prior consent or subsequent approval of the Judge. There is no such provision in Chapter IX having to do with municipal debt adjustments. Likewise Chapter IX was amended by said Chandler Act, and was subsequently amended in certain particulars by Act of March 4, 1940, c. 41, Section 1, 54 Stat. . . . . , and again by H. R. 9139, 76th Congress, Third Session, approved June 28, 1940. In none of the amendatory acts was any such provision as contained in said Section 249 inserted.

But even if Section 249, supra, is a statutory declaration of either equity or public policy, then the answer is that the entry of the interlocutory decree and the allowance of compensation, following the submission of all the facts involved, complies with all elements requiring the subsequent approval of the Judge.

The logic of the Circuit Court of Appeals in the Vallette case cannot be denied, namely: That the agent's acquisition of the interest items comes into play only at the option of the holder who would rather take cash and reduce his assessment than to speculate himself, that such holder has his choice and that all are assessed without discrimination. Likewise, the same court, in constructing Section 83 (b), stated:

> "The Act itself, allows expenses and compensation to be fixed for persons having all sorts of relations to the case. No disqualification to claim compensation appears."

We find neither in the Act, nor any decisions an inhibition against one creditor buying securities in good faith while they are free floating securities in the open market for the purpose of giving a consent in a bankruptcy composition. Therefore, there must be something more than mere ownership by purchase prior to the bankruptcy proceedings. It is stated in the brief of opposing counsel that the record is silent as to when the judgments were bought (Brief, page 22), but if such is the case, such silence is due to Petitioner's own fault in view of the fact that the Special Master specifically directed each claimant to supply the assignment of judgment included in its claim (R. 109) the same were supplied but omitted from the record by the directions filed by Petitioner. Such assignments showed just the contrary of what opposing counsel now asks this Court to presume and showed that all such judgments were purchased prior to the institution of the bankruptcy proceedings, and in some cases even prior to the contract itself. Not only do the omitted portions of the record show this to be a fact, but the record itself (R. 202) shows conclusively that the judgments were purchased "at a time when bankruptcy was not contemplated and it appeared to us that one of the best ways to assist in the accomplishment of the results sought was to purchase those judgments * * *." (See also R. 169, 171). In fact, in said brief, counsel admits that the consents to the plan were executed by the agent, such consents being those which allowed the institution of the suit and which were attached to the petition, but which likewise were omitted from the record at the instance of Petitioner. (R. 254.) The presumption, therefore, which counsel asks this Court to draw is not only false in fact, as such counsel should know, but is contrary to the record itself and to the full record had counsel seen fit to bring it all before this Court. Therefore, we shall assume that such judgments were all bought as free floating securities in the open market subject to purchase by

anyone prior to the bankruptcy proceedings. The reason why they were bought by this particular creditor is immaterial, but if deemed by the Court to be material, the same is amply explained in the fact that the judgments were rendered on past due items, were subject to enforcement writs requiring tax levies, constituted a hazard to the City, and to the ultimate fulfillment of the refunding operation without the coercive power of bankruptcy proceedings. In fact the same were bought at a time when it was not deemed possible to secure bankruptcy protection, and it appeared wise to accomplish the results sought by means of getting the recalcitrant claims into friendly hands. Only long after such acquisition by the Fiscal Agent, or other cooperating creditors, was bankruptcy even considered (R. 202). Nor is there any element of concealment or fraud in view of the facts that the consents and proofs of claim have been filed by the real and true owners on all the items involved. It now happens that because of such acquisition of securities, it is possible for the required per cent of creditors to be obtained and one creditor who holds a nominal amount of the indebtedness complains of having to pay his just proportionate part of the expense of the operation; and it must be remembered that he pays no part of that which is assessable against the Fiscal Agent's securities because each creditor pays a fixed unit prorata portion of the aggregate compensation allowed. Therefore, contrary to the assumption of counsel for Petitioner that the Fiscal Agent purchased these claims in order to obtain acceptances to the plan and enable the City to show the consent of the required percentage, the record is conclusive that it was done solely in order to preclude the necessity of bankruptcy action, or that it was done at a time when bankruptcy action was not contemplated or available.

Nor do we understand that any specification of error contemplates the basis for an argument that the debt structure

sought by such plan to be rehabilitated will be unsound, impossible of fulfillment, or unworkable. Even assuming that before a plan can be confirmed there must be a guarantee of performance, it is submitted that the record is conclusive that the plan devised follows pretty well plans in other similar taxing units which have worked, and the ability of the Fiscal Agent, and its experience and success in handling these refunding operations are amply established (R. 193, 198). See Vero Beach case, supra.

Concerning any discrimination in favor of the moneys arising out of the so-called Meredith writ, such is amply covered by the record to the full satisfaction of any reasonable person. Florida has what is known as the "first come, first served" rule, which allows a creditor to impound and have applied to his securities moneys on hand, or allows him to obtain an earmarked tax levy to the exclusion of all other creditors, and regardless of the ability of the unit to pay all. Thus, it was necessary to obtain such writ to earmark and protect the funds, not one dollar of which ever reached the Fiscal Agent or the relators in the mandamus case, and all of which is still held by the City to be used in meeting the first year's appropriation under the modified plan (R. 200). Concerning any failure on the part of the City to make levies for recalcitrant creditors, it may be stated that the enforcement of those writs was entirely up to each such creditor and to state that such judgment creditors had "been unable to compel the City to perform the mandates of the courts requiring the levy of taxes" is a most bold assertion on the part of opposing counsel as to the impotency of legal process.

We cannot refrain from calling the Court's attention to the assertion of opposing counsel in his brief on page 5 that

> "the testimony of the Vice-President of the Fiscal Agent (pp. 169, 170, 177, 203 and 204) establishes beyond doubt that one or both of the corporations

> owned a substantial portion of these claims at the time the Fiscal Agency contract was entered into with the City. Some of the bonds, coupons and judgments owned by the two corporations were purchased after the contract was made (p. 170)."

and the statement made on page 22 of his brief that

> "Hence, it is reasonable to assume that the Fiscal Agent purchased these claims in order to obtain for the City acceptance of the Plan, and enable the City to show the consent of holders of more than two-thirds of the claims, as required by statute."

Likewise, his statement on page 22 that

> "these judgments must have been bought after bankruptcy proceedings were instituted, * * *."

It is impossible to reconcile these totally inconsistent statements. The record shows that none of the claims or judgments was bought after bankruptcy action was even contemplated. (R. 169, 171, 202).

However, we do not admit that the decision in the Taylor case, supra, is a holding that a fiscal agency contract of the type involved in the suit at bar is invalid or unenforceable. On the contrary, a reading of all the opinions in the Supreme Court in the Taylor litigation will demonstrate the contrary. The Taylor case involved a county and not a city, and the specific distinction between them is made by the Supreme Court; the Taylor case did not hold that under the contract involved was the Fiscal Agent "managing or controlling any of the official functions involved in the issuing of refunding bonds"; nor did it hold that such agent could not be employed "for services in no wise official in their nature", nor did it deny compensation therefor; but it merely denied the right to use interest and sinking fund moneys in payment of such compensation; and finally, the Taylor litigation was on interlocutory

appeal, and the final decision of the Supreme Court merely remanded it to the Circuit Court for the making up of proper issues and the taking of testimony. However, we strenuously urge again that the contract is not material and the compensation allowed is by virtue of the Bankruptcy Act, and not by virtue of any contract for the very obvious reason that the Fiscal Agent and the City could not contract together, and by such contract, impose obligations on third parties.

The cases cited in Petitioner's brief are either inapplicable or clearly distinguishable:

In Re E. T. Kennedy Co., 136 Fed. 451, is inapplicable.

In Re Weintrob, 240 Fed. 532, involved claims that were purchased at full value after bankruptcy and the fact showed that it was a collusive device to aid the bankrupt to force a twenty-five per cent settlement in the composition proceedings.

In Re M. & H. Gordon, 245 Fed. 905, involved an agreement on the part of the bankrupt that constituted a preferential payment out of the assets of the bankrupt, to the detriment of other creditors.

In Re Kinnane Co., 221 Fed. 762, again involved a priority or preference in the bankrupt's estate.

In Re Griffith Stillings Press, 244 Fed. 315, the plan of composition was confirmed.

Fairbanks vs. Amoskeag National Bank, 38 Fed. 630, involved a secret agreement on the part of the bankrupt to pay an additional sum to one creditor, and the assignment of the claims to such creditor for the purpose of voting them had been fraudulently concealed.

We ask the Court to take judicial notice of the fact that Bondholders' Committees are generally composed of the principal creditors or representatives of corporate creditors who desire a centralized management for the purpose of, in many instances, effecting a reorganization; and that Chapter IX specifically allows compensation to such Committees or representatives of creditors for services and expenses in connection with the proceedings. The plan appropriately makes provision for the pro-ration of such costs among creditors; its allowance is, in final analysis, the act of the Court; it does not arise, nor is it payable by virtue of contract, and it is grounded upon specific statutory authority. Nor is there anything in Chapter IX, nor in equity or public policy that precludes a creditor who has rendered a valuable service from receiving compensation merely because he is such creditor. It is submitted, therefore, that specifications of error numbered 1 and 2 are without foundation.

With reference to Specification of Error No. 3, it should be conclusive to quote from the decision of the Circuit Court of Appeals in the Vallette case, supra, upon the authority of which the Circuit Court of Appeals affirmed the case at bar, wherein it was specifically held:

> "The proviso, however, does indicate that it is not inappropriate for the plan to deal with the matter of compensation, the allowance being at last the act of the judge. The vote of the creditors upon the plan does not at all bind the judge in finally allowing compensation."

> "As to amount, we are not prepared to overrule the allowance of the judge. As to its imposition on the creditors as a proportionate assessment, that is authorized by the words of the Act above quoted."

Thus, there is nothing in the opinion in the Vallette case in conflict with the decision of this Court in *Case vs. Los Angeles Products Co.*, 84 L. Ed. 22. (Adv. Sh.) The above quotations show specifically that while the Court considered the fact that the amount of the allowance, as set forth in the plan, had been approved by the vast majority of the creditors, it was not controlled thereby; but, on the contrary, it specifically adjudged that the vote of the creditors does not bind the Court, that the allowance is at last its act, and that its imposition as a proportionate assessment is authorized by the Act. It is significant indeed that this creditor now complaining holds barely four per cent of the indebtedness affected by the plan.

Nor is it true that under the fiscal agency contract would the Fiscal Agent have any control over the financial affairs of the City, because if counsel is correct, such contract is void; and if not, it has expired by its own limitation; and furthermore, such contract never contemplated any such thing, as a fair reading thereof will quickly disclose.

If Petitioner herein is fearful of the effect of speculation by the agent, then all it needs to do is to decline the option, accept the refunding bonds at par for its unliquidated interest items, and speculate itself.

In conclusion, we submit that the decision of the Circuit Court of Appeals should be affirmed.

ROBERT J. PLEUS,
Attorney for Respondent,
Orlando, Florida.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 31

AMERICAN UNITED MUTUAL LIFE INSURANCE COMPANY,
Petitioner,

vs.

CITY OF AVON PARK, FLORIDA,
Respondent.

PETITION FOR REHEARING

ROBERT J. PLEUS,
Attorney for Respondent.

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PETITION FOR REHEARING

To the opinion and decision of this Court under date of November 25, 1940, Respondent, City of Avon Park, Florida, files this its Petition for Rehearing.

At the outset, Respondent desires to impress upon the Court that it has no quarrel with the imposition by a Court of Equity of the highest standards of business ethics, fair dealing and moral practice; however, it respectfully submits that because of the matters hereinafter set forth the opinion and decision of this Court will have a terrific impact upon bankruptcy reorganizations of every nature, will render nugatory in

many of their aspects the practical operation of the remedial reorganization statutes passed by the Congress, and above all, will now place in the hands of the recalcitrant minorities the very weapons which it was the design and object of the Congress to take from them in the passage of these Acts. The result of the opinion and decision of this Court upon Respondent is to deprive it and its taxpayers of the benefits of Chapter IX of the Bankruptcy Laws of the United States, as amended, inasmuch as a single creditor has a sufficient volume of securities to prevent the operation of the Act.

It is respectfully submitted that in its opinion and decision of November 25, 1940, this Court overlooked and failed to consider the following:

1. That Chapter IX is fundamentally predicated upon, and is inoperative without, absolute cooperation and identity of interest and objective existing between the unit and the requisite majority of its creditors. The unit is helpless to even institute the proceedings without fifty-one per cent of its creditors already seeing eye to eye with it, and confirmation may not be had until sixty-six and two-thirds per cent of the holders in volume of the indebtedness affected are in agreement. Thus, the operative effect of the Act is made possible only by cooperative effort between the unit and the majority of its creditors.

2. That there is a specific distinction in the Act itself between a creditor who is merely a creditor, and a creditor who renders special service not rendered by other creditors and for which it is entitled to just compensation; and in holding that in passing upon the compensation to be received by a creditor to determine whether such is reasonable, the Court must take into consideration the aggregate of all the emolu-

ments accruing to such creditor, or the aggregate benefits flowing to it, the total of which must be reasonable, this Court fails to distinguish between a bona fide creditor merely and one who, though a creditor, has rendered a special service for which it is entitled to compensation; and likewise, such holding flies in the very face of Section 83 (b) of the statute itself, which grants specific authority and power to the Bankruptcy Court to award reasonable compensation for services performed, whether by creditors, representatives of creditors, or those bearing any other relationship to the proceedings. Furthermore, to hold that there is discrimination because one creditor might derive more in aggregate dollars by his investment for the reason that he has invested more, is to imply that regardless of such investment all creditors must receive the same aggregate dollar value, irrespective of the amount or volume of their claim.

3. That a holding that the plan of composition should make disclosures as to the nature, extent and circumstances surrounding the acquisition of claims of a creditor who seeks the consent of other creditors to such Plan, is directly contrary to the express provisions of Section 83 (a) of the Act, which sets forth what the petition and the Plan shall contain.

4. That a holding that it must affirmatively appear that there was a full and complete disclosure of a creditor's interest to other creditors, whose consents are solicited, before such consents may be said to be fairly obtained, is to write into the Act that which is not there, is to lay down a requirement not heretofore found in a single adjudicated case, and is likewise contrary to the decision in *Vallette vs. City of Vero Beach*, 104 F. (2) 59, 124 A. L. R. 686, to which this Court denied certiorari, 84 L. Ed. 87, 60 Sup. Ct. 110, and to comply with which the proceedings in the cause at bar were specifically

amended. Furthermore, such holding as to complete disclosure violates every rule of orderly pleading to arrive at issues, inasmuch as no such issue was raised in the pleadings of the recalcitrant creditor, but on the contrary, its amended answer specifically alleged details of such interest showing that it had full and complete knowledge and notice (R. 71). Furthermore, the interest involved was represented by judgments assigned of record, which assignments were voluntarily produced in open court (R. 151, 152), the full circumstances of their acquisition fully disclosed (R. 169, 202), the price paid therefor revealed (R. 178), all of them having been purchased prior to any bankruptcy proceedings (R. 170-171), and the substantial portion thereof having been owned even prior to the execution of any fiscal agency contract (R. 169). Thus it is that all creditors who were parties to the cause had full knowledge of all circumstances, not one sought to withdraw his consent, and the only complaining creditor knew all of the facts, as disclosed by its answer. Somewhere there is still left the principle of estoppel by judicial conduct. Furthermore, the "benefit" to be derived by R. E. Crummer & Company for special services which it alone rendered, was specifically stated in the Plan, its "profit", in the event there was a rising market from its legitimate investment in Avon Park securities, was subject to immediate mathematical calculation, and in fact the original petition filed contained all consents of it and its affiliated company on all the judgments and securities owned, which constituted notice to the world as to its interest as a creditor. Of this interest, no one complained but the petitioning creditor, who had full knowledge. It is apparent therefore that both the courts below fulfilled their full duty in allowing the inclusion of the vote of the claims held by this company after full and complete disclosure of all the circumstances involved.

5. That the record is uncontradicted that no securities involved were either purchased or sold during or in contemplation of the bankruptcy proceedings (R. 169, 170, 171); and the assignments of the judgments involved affirmatively showed such fact, but petitioner did not see fit to include them in the record.

6. That the implication that there was any "control" by the City of the securities owned and held by any creditor is contrary to the very record itself, which negatives such control (R. 177), and which affirmatively shows that the "claimant's assent to the plan" clearly reflected not the City's desires, but solely and only "an expression of an investor's independent business judgment", (R. 193, 208); and based upon such evidence, the Master specifically found the acceptances to have been in good faith (R. 224), which was specifically confirmed by appropriate findings by the District Court (R. 240, 244, 245, 247).

7. That the implication concerning any illegality in the fiscal agency contract is contrary to the specific holding of validity in the latest decision of the Supreme Court of Florida in the case of *State vs. City of Fort Myers*, decided November 22, 1940, certified copy of which was immediately furnished this Court; and likewise, any implication with reference to an injunction by a taxpayer enjoining the issuance of the new bonds, or the levy of assessments therefor, is contrary to the record, which affirmatively shows not only in the Plan itself (R. 88), but by uncontradicted testimony (R. 200) that the refunding bonds in contemplation have been authorized and duly validated. (R. 200.)

8. That the implication in foot note 5 that there were other emoluments to be derived by the Fiscal Agent by virtue

of the provision in the contract granting exclusive authority for a period of three years is contrary to the specific terms of the contract itself, which was for a period of one year, unless the Fiscal Agent had obtained the consent of holders of seventy-five per cent or more of the bonds to be refunded to participate in the plan of refunding (R. 36); the contract was dated July 17, 1937, and petitioner has specifically admitted in its brief that the seventy-five per cent requisite to a continuation of the contract had not been obtained. (Petitioner's Brief, p. 23). Thus it is that the contract is utterly immaterial except insofar as, pursuant to it, services were rendered antecedent to the development of the modified plan of composition, which was ultimately confirmed, and for which services the creditor theretofore acting as Fiscal Agent would be entitled to just and reasonable compensation under the express provisions of Section 83 (j). See also *Vallette vs. City of Vero Beach*, supra.

9. That in holding that the "speculative position in such of the interest accruals as it might acquire from the bondholders at one-third of their face amount" might bring about excess benefits discriminating in favor of the creditor so purchasing the same, the said provision is wholly optional with each creditor who must be presumed to know the value of its securities, and such holding presupposes a rising market and a profit, and overlooks entirely the absolute right of any creditor to purchase at the same figure or a lesser figure, if anyone is willing to sell.

10. That in holding that the provision with reference to disregarding claims "owned, held, or controlled" by the City was aiming at any abuse is to inject into the Act that which is not there, and to overlook entirely that the sole purpose of such provision was to specifically provide that securities which

had been acquired or retired by the debtor could not be used in the computation involved.

11. That the holding that the Fiscal Agent was acting in a dual capacity in representing the City and purporting to represent the interest of hondholders is contrary to the whole intent and purpose of the original fiscal agency contract, and is contrary to the very basis upon which proceedings such as these must rest, namely, cooperation and identity of interest and objectives between the debtor and the majority of its creditors.

12. That a reading of the entire record will affirmatively disclose the utmost good faith of the City and the creditor assisting it in working out its debt problem, a full disclosure in the testimony of all requisite and pertinent facts, a consideration thereof by the Court, and all elements necessary to constitute fair dealing.

WHEREFORE, Respondent respectfully and earnestly urges this Court to not remand this cause and thus bring about the utter chaos that will result by its being denied the benefits of the Act against those very creditors who made the enactment of the statute essential.

Respectfully submitted,

.....

ROBERT J. PLEUS,

Orlando, Florida.

Attorney for Respondent.

CERTIFICATE OF COUNSEL

The undersigned, counsel for Respondent, does hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

.....

ROBERT J. PLEUS.

P. 7,

SUPREME COURT OF THE UNITED STATES.

No. 31.—October Term, 1940.

American United Mutual Life Insurance Company, Petitioner, *vs.* City of Avon Park, Florida. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[November 25, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

The District Court confirmed a plan for the composition of the debts of respondent under Ch. IX of the Bankruptcy Act (50 Stat. 653; 52 Stat. 939, 940).[1] The Circuit Court of Appeals affirmed that order. 108 F. (2d) 1010. Petitioner, a creditor of the city, having objected to the confirmation in the courts below, brought the case here on a petition for certiorari, which we granted in view of the importance of the problems in the administration of the composition and reorganization provisions of the Act.

The city's composition was a refunding plan worked out by it and its fiscal agent,[2] R. E. Crummer & Co. Pursuant to the fiscal agency contract both parties were to use their best efforts to induce the creditors to participate in the plan. The city was not to pay any of the costs of the refunding, as Crummer was to defray all expenses incident to assembling the bonds, printing the refunding bonds, representing the city in proceedings to validate the new bonds, obtaining a legal opinion approving the bonds, *etc.* The fiscal agency contract provided that Crummer was to be compensated for its services and reimbursed for its expenses by assessing charges against the participating bondholders. This charge was $40 for each $1000 bond; or in case the bondholders elected to sell Crummer the interest

[1] The Act of August 16, 1937 (50 Stat. 653) under which the petition was filed expired June 30, 1940, except in respect to proceedings initiated on or prior to that date. That Act, however, was amended by the Act of June 28, 1940 (No. 669, 76th Cong., c. 438, 3d Sess.) which, *inter alia*, extended for another two years the time for filing petitions.

[2] R. E. Crummer & Co. is a Delaware corporation organized primarily to represent clients of an affiliate (see *infra*, note 4) who had purchased bonds in Florida. Beginning in 1931, it had handled the debt problems of over 200 taxing units.

coupons, accrued to July 1, 1937, at one-th rd of their face amount,[3] the charge was to be $20 per $1000 bond.

Crummer solicited assents to the plan. Approximately 69% of the bondholders accepted. But for the claims held by the Crummer interests,[4] and voted in favor of the plan, the requisite two-thirds statutory vote, however, would not have been obtained. Some of these claims had been purchased prior to the fiscal agency con act, some later. The average price was apparently about 50¢ on the dollar. The inference seems clear that some of them were acquired in order to facilitate consummation of the composition by placing them in friendly hands. But the record does not show whether or not Crummer disclosed to the bondholders when their assents were solicited that it was a creditor as well as the city's fiscal agent, the extent of the claims held by it and its affiliate, the circumstances surrounding their acquisition, and its intent to vote those claims in favor of the plan. No such disclosure was made in the plan.

The District Court, however, found that the two-thirds of the aggregate amount of claims affected by the plan, required by § 83(d), 11 U. S. C. § 403(d), for confirmation, had assented. It also found that Crummer's compensation was fair and reasonable, that the plan and its acceptance were in good faith, and that the plan

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[3] Under the original plan all such accrued interest coupons were to be acquired by Crummer at 33⅓% of the face amount, which when refunded into new bonds, would be held by it subject to purchase by the City at not exceeding 50% of the face thereof for the first six months, 60% for the succeeding six months, 70% for the next six months, and 75% for the following six months. Due to fears of illegality, the plan was modified. As modified it provided that compensation of the fiscal agent was to be 4% of the principal debt with the right of any creditor to sell to Crummer the interest accruals at 33⅓% of their face amount. In the latter event the charge against him was reduced to 2% and Crummer held the securities so obtained subject to the right of the city to acquire them at the rates above indicated. The fiscal agent estimated that it would get substantially the same amount of money out of the plan whichever option the bondholders elected.

Interest accruals were to be escrowed. Proceeds of the collection of delinquent taxes were to be remitted to the escrow agent who would reduce the amount owed by the city under the escrow by such amount as would result in the particular proceeds constituting a *pro tanto* payment and discharge at 50% of par during the first six months, 60% during the next six months, 70% during the next six months, and 75% during the following six months.

Thus in effect the interest accruals could be offset against delinquent taxes, the city being able to retire some of its debt at less than par if it could stimulate tax collections. The proceeds received by the escrow agent were to be held for the benefit of the depositors.

[4] R. E. Crummer & Co. and Brown-Crummer Investment Co. R. E. Crummer was president of both. A majority of the boards of both corporations was identical. The Crummer interests had acquired over a third of the claims.

was fair, equitable and for the best interests of the creditors, and did not discriminate unfairly in favor of any creditor.

We disagree. The order of confirmation must be set aside. It cannot be said that the plan does not discriminate unfairly in favor of any creditor, that the acceptances were in good faith, that the requisite two-thirds vote of approval had been obtained.

Crummer had at least[5] three financial stakes in this composition: (1) the fee to be collected from the bondholders; (2) its speculative position in such of the interest accruals as it might acquire from the bondholders at a third of their face amount; (3) the profit which might accrue to it or its affiliate, as a result of the refunding, on bonds acquired at default prices.

The court found that the first of these items was reasonable. But it apparently deemed the others irrelevant to the inquiry.

Clearly, however, no finding could be made under § 83(b), 11 U. S. C. § 403(b), that the compensation to be received by the fiscal agent was reasonable without passing on the worth of the aggregate of all the emoluments accruing to the Crummer interests as a result of consummation of the plan. Since that inquiry would necessitate an appraisal of the fiscal agent's speculative position in the plan, perhaps the definitive finding demanded by the Act could not be made. Yet that is a chance which the fiscal agent, not the bondholders, must take; for it is the agent who is seeking the aid of the court in obtaining one of the benefits of the Act. Moreover, to the extent that the aggregate benefits flowing to the Crummer interests exceeded reasonable compensation for services rendered, their reward would exceed what the court could authorize under § 83(b), 11 U. S. C. § 403(b). Furthermore, if any such excess benefits would accrue to them, then the plan would run afoul of § 83(e)(1), 11 U. S. C. § 403(e)(1). For in that event the plan would discriminate unfairly in favor of the Crummer interests as creditors.

Hence the lack of that essential finding would be fatal in any case. It is especially serious here in view of the fact that without the vote

[5] There were other emoluments for Crummer. It was granted "exclusive authority" to act for and on behalf of the city for a period of three years "in all matters connected with, or relating to, the exchange." And in case any bonds or coupons were presented for payment or suit instituted thereon the city agreed to give Crummer notice before any terms of settlement were agreed upon. These provisions, the fact that the Crummer interests hold large blocks of claims acquired at default prices, the likely interest of Crummer in the accrued coupons and its strategic position all point towards future speculative possibilities which are not inconsiderable, whatever may be said of their unhealthy impact on the city and the public investors alike.

of the fiscal agent the requisite two-thirds acceptance would not have been obtained. Where it does not affirmatively appear that full and complete disclosure of the fiscal agent's interests was made to the bondholders when their assents were solicited, it cannot be said that those assents were fairly obtained. Cf. *Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123, 143. And where without such disclosure the fiscal agent's vote was cast for acceptance of the plan, it cannot be said that such acceptance was in "good faith" within the meaning of § 83(e)(5), 11 U. S. C. § 403(e)(5). Here the fiscal agent was acting in a dual capacity. While it was representing the city, it likewise purported to represent the interests of bondholders. The very minimum requirement for fair dealing was the elementary obligation of full disclosure of all its interests. And the burden was on it to show at least that such disclosure was made. Equity and good conscience obviously will not permit a finding that an acceptance of a plan by a person acting in a representative capacity is in "good faith" where that person is obtaining an undisclosed benefit from the plan.

We have emphasized that full disclosure is the minimum requirement in order not to imply that it is the limit of the power and duty of the bankruptcy court in these situations. As this Court stated in *Securities and Exchange Commission* v. *United States Realty & Improvement Co.*, 310 U. S. 434, 455: "A bankruptcy court is a court of equity, § 2, 11 U. S. C. § 11, and is guided by equitable doctrines and principles except in so far as they are inconsistent with the Act. . . . A court of equity may in its discretion in the exercise of the jurisdiction committed to it grant or deny relief upon performance of a condition which will safeguard the public interest." And see *Pepper* v. *Litton*, 308 U. S. 295, 304, *et seq.* These principles are a part of the control which the court has over the whole process of formulation and approval of plans of composition or reorganization, and the obtaining of assents thereto. As we said in *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106, 114, "The court is not merely a ministerial register of the vote of the several classes of security holders." The responsibility of the court entails scrutiny of the circumstances surrounding the acceptances, the special or ulterior motives which may have induced them, the time of acquiring the claims so voting, the amount paid therefor, and the like. See *Continental Insurance Co.* v. *Louisiana Oil Refining Corp.*, 89 F. (2d) 333. Only after such investigation can the court exercise the "informed, independent judgment" (*National Surety Co.* v. *Coriell*, 289 U. S. 426, 436; *Case* v. *Los Angeles Lum-*

ber Products Co., supra, p. 115) which is an essential prerequisite for confirmation of a plan. And that is true whether the assents to the plan have been obtained prior to the filing of the petition or subsequent thereto. Where such investigation discloses the existence of unfair dealing, a breach of fiduciary obligations, profiting from a trust, special benefits for the reorganizers, or the need for protection of investors against an inside few or of one class of investors from the encroachments of another, the court has ample power to adjust the remedy to meet the need. The requirement of full, unequivocal disclosure; the limitation of the vote to the amount paid for the securities (*In re McEwen's Laundry, Inc.,* 90 F. (2d) 872); the separate classification of claimants (see *First National Bank* v. *Poland Union,* 109 F. (2d) 54, 55); the complete subordination of some claims (*Taylor* v. *Standard Gas & Electric Co.,* 306 U. S. 307; *Pepper* v. *Litton, supra*), indicate the range and type of the power which a court of bankruptcy may exercise in these proceedings. That power is ample for the exigencies of varying situations. It is not dependent on express statutory provisions. It inheres in the jurisdiction of a court of bankruptcy. The necessity for its exercise (*Pepper* v. *Litton, supra,* p. 308) is based on the responsibility of the court before entering an order of confirmation to be satisfied that the plan in its practical incidence embodies a fair and equitable bargain openly arrived at and devoid of overreaching, however subtle. Neglect of that duty is apparent here by inclusion of the vote of the claims held by the Crummer interests in computing the requisite statutory assents, without protection of the public investors through the requirement of full disclosure and of other appropriate safeguards. By the same token allowance of compensation to Crummer without scrutiny of Crummer's speculation in the securities does not comport with the standards for surveillance required of courts of bankruptcy before confirming plans of composition or reorganization or before making such allowances. The scope of the power of the court embraces denial of compensation to those who have purchased or sold securities during or in contemplation of the proceedings. As in case of reorganizations under former § 77B, the provision in § 83(b), 11 U. S. C. § 403(b), for allowance of "reasonable compensation" for "services rendered" necessarily implies "loyal and disinterested service in the interest of the persons" for whom the claimant purported to act. *In re Paramount-Publix Corp.,* 12 F. Supp. 823, 828.

Beyond that is the question of unfair discrimination to which we have adverted. Compositions under Ch. IX, like compositions under the old § 12, envisage equality of treatment of creditors. Under that section and its antecedents, a composition would not be confirmed where one creditor was obtaining some special favor or inducement not accorded the others, whether that consideration moved from the debtor or from another. *In re Sawyer*, Fed. Cas. No. 12,395; *In re Weintrob*, 240 Fed. 532; *In re M. & H. Gordon*, 245 Fed. 905. As stated by Judge Lowell in *In re Sawyer, supra*, "if a vote is influenced by the expectation of advantage, though without any positive promise, it cannot be considered an honest and unbiased vote." That rule of compositions is but part of the general rule of "equality between creditors" (*Clarke* v. *Rogers*, 228 U. S. 534, 548) applicable in all bankruptcy proceedings. That principle has been imbedded by Congress in Ch. IX by the express provision against unfair discrimination. That principle as applied to this case necessitates a reversal. In absence of a finding that the aggregate emoluments receivable by the Crummer interests were reasonable, measured by the services rendered, it cannot be said that the consideration accruing to them, under or as a consequence of the adoption of the plan, likewise accrued to all other creditors of the same class. Accordingly, the imprimatur of the federal court should not have been placed on this plan. The fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard. The former is not a substitute for the latter. They are independent. See *Case* v. *Los Angeles Lumber Products Co., supra*, pp. 114-115.

Since the cause must be remanded there are two other matters which should be mentioned. Sec. 83(d), 11 U. S. C. § 403(d), provides that in computing the statutory two-thirds vote necessary for confirmation of a plan all claims "owned, held, or controlled" by the city shall be excluded. So far as appears, the claims held by the Crummer interests were not owned by or held for the city. Yet it is by no means clear that they were not "controlled" by the city within the meaning of the Act. Claims held by a city's fiscal agent presumptively would seem to fall in that prohibited category. The abuse at which the Act is aimed is not confined to those cases where the holder of the claims is an agent

of the city within the strict rules of *respondeat superior*. Rather, the test is whether or not there is such close identity of interests between the claimant and the city that the claimant's assent to the plan may fairly be said to be more the product of the city's influence and to reflect more the city's desires than an expression of an investor's independent, business judgment. Here there was such a close identity of interests between Crummer and the city *vis-à-vis* the refunding as to raise grave doubts as to the propriety of allowing those claims to vote in any event. That, however, is a question for appropriate findings by the court should another plan be presented.

Petitioner also urges that the fiscal agency contract between Crummer and the city was illegal under the decisions of the Supreme Court of Florida in *Taylor* v. *Williams*, — Fla. —, 195 So. 175, — Fla. —, 195 So. 184, — Fla. —, 196 So. 214, and *W. J. Howey Co.* v. *Williams*, — Fla. —, 195 So. 181. Under § 83(e)(6), 11 U. S. C. § 403(e)(6), the court must be satisfied that the city "is authorized by law to take all action necessary to be taken by it to carry out the plan" before it may enter a decree of confirmation. Plainly that finding could not be made if it was clear, for example, that a taxpayer could enjoin the issuance of the new bonds or the levy of assessments therefor. The courts below did not pass on the applicability of these recent Florida decisions to this fiscal agency contract since they were decided after the Circuit Court of Appeals affirmed the order of confirmation. Nor do we undertake to decide the question in view of our disposition of the case. It is, however, a relevant inquiry to be made by the District Court as, if and when another plan of composition is presented, which directly or indirectly involves any such fiscal agency contract.

For the reasons stated we reverse the judgment below and remand the cause to the District Court for proceedings in conformity with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.